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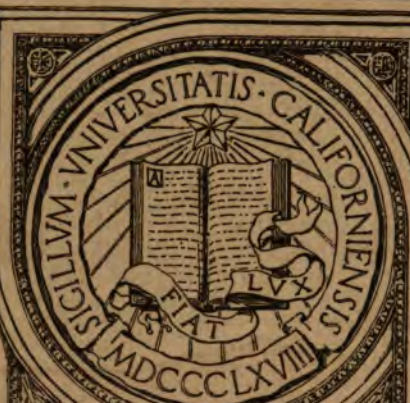
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ELECTION LAWS

OF WISCONSIN

WITH NOTES AND FORMS

COMPILED UNDER DIRECTION OF
W. L. HOUSER

Secretary of State



MADISON, WIS.
DEMOCRAT PRINTING COMPANY, STATE PRINTER
1906.

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PREFATORY NOTE.

Section 342, Statutes of 1898, authorizes the Secretary of State to publish as often as he shall deem necessary, the laws relating to elections. It has been the practice of the Secretary of State, under the authority of this section, to publish after each session of the legislature a revised compilation of such laws. The present publication is made in pursuance of such authority and in accordance with such practice. It contains the laws of Wisconsin relating to elections, the nomination of candidates, and the registry of electors. The notes of cases printed in previous compilations are continued, with additional notes of recent cases, bringing them down to date.

The Primary Election Law, which is printed in this compilation as Part II, is "An act to provide for party nominations by direct vote." It was undoubtedly the intention of the legislature that this law should take the place of the caucus and convention law entirely, and that after its enactment there should be no nominations for office made by caucus and convention. This would have been the effect of the law but for the exemption of certain offices from its operation. Section 2 provides that "Hereafter, all candidates for elective offices shall be nominated 1, by a primary held in accordance with this act, or 2, by nomination papers, signed and filed as provided by existing statutes." The same section further provides that "This act shall not apply to special elections to fill vacancies nor to the office of state superintendent, to county and district superintendents of schools, to town, vil-

lage and school district officers, nor to judicial officers excepting police justices and justices of the peace in cities." The effect of this section is to repeal the caucus and convention law as to all candidates for elective offices excepting such as are expressly excepted from the operation of the primary law. As to those which are excepted and to which the caucus and convention law was applicable prior to the enactment of the primary law, the caucus and convention law is still in full force and effect. Attention is called to this fact here to show why the caucus and convention law is published herein as a part of the election laws of this state.

The appendix, consisting of opinions by the attorney general, printed in previous compilations, has been omitted. The opinions contained therein related principally to the caucus law of 1899, and since, as a matter of fact, no nominations are now made under this law, though still in force as to certain offices as pointed out above, such opinions can be of no practical value and could serve no purpose by being published herein.

Forms for blanks necessary to carry out the provision of the Primary law are printed as foot notes to the sections under which such blanks are required. All blanks for the canvass and return of the September primary are furnished by the Secretary of State and forms for such blanks are therefore not printed herein.

Forms for other election blanks are printed in connection with the sections under which they are required.

W. L. HOUSER,
Secretary of State.

Department of State, Madison,
February 19, 1906.

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Election Laws of Wisconsin.

PART I.

CONSTITUTIONAL PROVISIONS RELATING TO SUFFRAGE, ELIGIBILITY TO OFFICE, AND GENERAL ELECTIONS.

- Who are qualified electors, 1.
- Who not qualified electors, 2.
- Votes to be by ballot, 3.
- Residence not lost, when, 4.
- Who not residents, 5.
- Who may be excluded from right of suffrage, 6.
- Who ineligible to office, 7.
- Sheriffs, 8.
- Supreme and circuit judges, 9.
- Members of legislature, 10.
- Members of congress and federal officers, 11.
- Time of holding general elections, 12.

1. Who are qualified electors. [Art. 3, sec. 1, as amended in 1882.] Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the state for one year next preceeding any election, and in the election district where he offers to vote such time as may be prescribed by the legislature, not exceeding thirty days, shall be deemed a qualified elector at such election:

1. Citizens of the United States.
2. Persons of foreign birth who shall have declared their intentions to become citizens conformably to the laws of the United States on the subject of naturalization.

3. Persons of Indian blood who have once been declared by law of congress to be citizens of the United States, any subsequent law of congress to the contrary notwithstanding.

4. Civilized persons of Indian descent, not members of any tribe. Provided, that the legislature may, at any time, extend by law the right of suffrage to persons not herein enumerated; but no such law shall be in force until the same shall have been submitted to a vote of the people at a general election, and approved by a majority of all the votes cast at such election; and provided further, that in incorporated cities and villages, the legislature may provide for the registration of electors and prescribe proper rules and regulations therefor.

The qualifications made sufficient by the constitution cannot be added to by the legislature: *State v. Williams*, 5 Wis. 308; nor impaired, *State v. Baker*, 38 Wis. 71; *State v. Tuttle*, 53 Wis. 45. But the legislature may prescribe how proof of the right to vote may be made: *State v. Lean*, 9 Wis. 279. The right to vote cannot be impaired by neglect of officers who are charged with the duty of making registry if names of voters are on register de facto, which is used at the election, though it was not made in the manner prescribed by law: *State v. Baker*, 38 Wis. 71, 84-85.

Extension of suffrage. The legislature may, by law approved as prescribed by this section, extend the right of suffrage to women: *Brown v. Phillips*, 71 Wis. 239.

This section is to be construed as providing for an extension of suffrage, if a majority of all the votes on that subject cast at any general election at which the question is submitted shall be in its favor: *Gillespie v. Palmer*, 20 Wis. 544.

Indians. Civilized persons of Indian descent, not members of any tribe, and having requisite qualifications as to age, sex and residence are qualified electors: *Hilgers v. Quinney*, 51 Wis. 62.

Children of aliens. Children of aliens who during minority come to this country with their parents, may become citizens by virtue of the full naturalization of their fathers; but the mere fact that their fathers have declared their intentions to become citizens does not make such children citizens, either of the United States or of this state, nor entitle them to vote here: *In re Conway and Gibbons*, 17 Wis. 526; *In re Wehlitz*, 16 Wis. 443.

In the election district. The legislature had authority to authorize volunteers in the civil war to vote for local officers when they were without the state: *State v. Main*, 16 Wis. 398.

Next preceding any election. The day of election must be excluded in computing time: *Anthony v. Halderman*, 7 Kan. 50; *People v. Holden*, 28 Cal. 123.

Eligibility to office. An alien who has not declared his intention to become a citizen cannot hold office; but he may be elected to an office,

and if disability be removed before commencement of term, he may qualify and hold same: *State v. Murray*, 28 Wis. 96. See *State v. Smith*, 14 id. 487. The doctrine of these cases adhered to: *State v. Trumpf*, 50 id. 103; and a statute prescribing the qualifications of voters, and providing that they may hold any city office, held not to change the rule of eligibility: *Ibid*.

If the person receiving a plurality of votes becomes a citizen on or before the day of the commencement of his term, he is entitled to the office; and when a city charter provided by one section that the term should commence on a certain day, and by another that when an officer should fail to qualify within ten days after receiving notice of election, the office should be vacant, it was held that if the disability were removed and other qualification made within such ten days, though after the day named in the first section, then the person elected would be entitled to the office. *State v. Trumpf*, 50 Wis. 103.

A member of the legislature may be elected county judge, and will not be disqualified by subsequent enactment of a law increasing his duties and the emoluments of the office: *State v. Boyd*, 21 Wis. 208.

Not exceeding thirty days. See paragraph 75.

2. Who not qualified electors. [Sec. 2, art. 3.] No person under guardianship, non compos mentis, or insane, shall be qualified to vote at any election; nor shall any person convicted of treason or felony be qualified to vote at any election unless restored to civil rights.

Same subject. [Ses. 2, art. 13.] Any inhabitant of this state who may hereafter be engaged, either directly or indirectly in a duel, either as principal or accessory, shall forever be disqualified as an elector, and from holding any office under the constitution and laws of this state, and may be punished in such other manner as shall be prescribed by law.

3. Votes to be by ballot. [Sec. 3, art. 3.] All votes shall be given by ballot, except for such township officers as may by law be directed, or allowed to be otherwise chosen.

Deciding the vote by ballot. The Indiana court has held that a similar provision does not invalidate a statute which provides that where there is a tie vote the right to the office shall be determined by lot. Under such an act the electors vote by ballot and each ballot has all the force it can possibly have: *Johnston v. State*, 27 N. E. Rep. 422, citing *Webster v. Gilmore*, 91 Ill. 324; *Keeler v. Robertson*, 27 Mich. 116; *Evans v. Sutherland*, 41 Mich. 177; *State v. McKinnon*, 8 Ore. 501; *State v. Wilkinson*, 23 Neb. 710, 37 N. W. Rep. 617; *Hammock v. Barnes*, 4 Bush, 390.

Ballot defined. "A vote is the wish or will of an elector, whether expressed by ballot or *viva voce*. That wish or will expressed by bal-

lot must not be known to any one except the voter himself, by such ballot. The paper called a ballot must not disclose for what or for whom it is voted, except by the name of the person voted for and the office on the face thereof. If it has any mark or device on the outside, and visible or apparent to common or casual observation, that discloses for what or for whom it is voted, it is not a ballot. This I understand to be the strict meaning of a constitutional ballot; but this construction of the constitutional requirement must be reasonable. It would almost seem that whatever mark there might be on the ballot by which it might possibly be known how the elector voted, to invalidate it, ought to have been placed there by design, and not by mere accident." Hence it was held, because the ballots for judicial, and those for non-judicial, officers are required to be put into separate boxes, that ballots having the word "judiciary" printed on the back thereof are not void, though only the ballots cast for one of the candidates for the office of county judge was so distinguished: *State v. Barden*, 77 Wis. 601.

"The word 'ballot' means, in the election of public officers, and always meant, a paper so prepared by printing or writing thereon as to show the voter's choice, and 'vote by ballot' the deposit of such paper in a box in such a way as to conceal the voter's choice if he so desires." *State v. Anderson*, 100 Wis. 523.

Voting machines. The Massachusetts constitution provides that representatives "shall be chosen by written vote." Four of the seven justices of the supreme court have advised the legislature that such provision does not prohibit the use of voting machines dispensing with the use of a separate piece of paper for each vote, and registering the successive votes by successive punches by revolution of cog-wheels or other similar device, the total number being shown by an index: *In re House Bill No. 1291*, 60 N. E. Rep. 129.

4. Residence not lost, when. [Sec. 4, art. 3.] No person shall be deemed to have lost his residence in this state, by reason of his absence on business of the United States, or of this state.

5. Who not residents. [Sec. 5, art. 3.] No soldier, seaman, or marine, in the army or navy of the United States, shall be deemed a resident of this state in consequence of being stationed within the same.

See note to paragraph 76.

6. Who may be excluded from right of suffrage. [Sec. 6, art. 3.] Laws may be passed excluding from the right of suffrage all persons who have been or may be convicted of bribery or larceny, or of any infamous crime, and depriving every person who shall make, or become directly or indirectly

interested in, any bet or wager depending upon the result of any election, from the right to vote at such election.

The statute excluding from right of suffrage any person convicted of bribery or betting on an election, in paragraph 76. Conviction of bribery vacates the office obtained thereby. Paragraph 337. Conviction of any infamous crime vacates any office under constitution and laws of this state, held by the convict, and pardon does not restore it. Statutes, 1898, sec. 4935. Conviction of treason, felony or bribery, ground of challenge, paragraph 121. See note to paragraph 333 for cases on bribery.

7. Who ineligible to office. [Sec. 3, art. 13.] No member of congress, nor any person holding any office of profit or trust under the United States (postmasters excepted) or under any foreign power, no person convicted of any infamous crime in any court within the United States, and no person being a defaulter to the United States, or to this state, or to county or town therein, or to any state or territory within the United States, shall be eligible to any office of trust, profit or honor in this state.

8. Sheriffs. Sec. 4, art. 6, provides that sheriffs shall hold no other office, and be ineligible for two years next succeeding the termination of their offices.

9. Supreme and circuit judges. [Sec. 7, art. 7.] For each circuit there shall be chosen by the qualified electors thereof one circuit judge, except that in any circuit composed of one county only, which county shall contain a population, according to the last state or United States census, of one hundred thousand inhabitants or over, the legislature may, from time to time, authorize additional circuit judges to be chosen. Every circuit judge shall reside in the circuit from which he is elected, and shall hold his office for such term and receive such compensation as the legislature shall prescribe.

Sec. 10, art. 7, provides that judges of the supreme and circuit courts "shall hold no office of public trust, except a judicial office, during the term for which they are respectively elected, and all votes for either of them for any office, except a judicial office, given by the legislature or the people, shall be void."

A circuit judge must, at time of his election, be a resident of the circuit for which elected, and must reside therein while he holds the office: *State v. Messmore*, 14 Wis. 163.

10. Members of legislature. [Sec. 12, art. 4.] No member of the legislature shall, during the term for which he was elected, be appointed or elected to any civil office in the state, which shall have been created, or the emoluments of which shall have been increased, during the term for which he was elected.

11. Members of congress and federal officers. [Sec. 13, art. 4.] No person being a member of congress, or holding any military or civil office under the United States, shall be eligible to a seat in the legislature, and if any person shall, after his election as a member of the legislature, be elected to congress, or be appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat.

12. Time of holding general elections. [Part of sec. 1, art. 13, as amended in 1882.] The political year for the state of Wisconsin shall commence on the first Monday in January in each year, and the general election shall be holden on the Tuesday next succeeding the first Monday in November. The first general election for all state and county officers, except judicial officers, after the adoption of this amendment shall be holden in the year A. D. 1884, and thereafter the general election shall be held biennially.

PART II.

PRIMARY ELECTION LAW.

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13. Definition and construction. [SECTION 1, ch. 451, laws of 1903.] The words and phrases in this act shall, unless the same be inconsistent with the context, be construed as follows:

1. The word "primary," the primary election provided for by this act;

2. The words "September primary," the primary election held in September to nominate candidates to be voted for at the ensuing general election;

3. The word "election," a general or city election, as distinguished from a primary election;

4. The words "November election," the general election held in November;

5. The word "precinct," a district established by law within which all qualified electors vote at one polling place.

This statute shall be liberally construed, so that the real will of the electors may not be defeated by any informality or failure to comply with all provisions of law in respect to either the giving of any notice or the conducting of the primary or certifying the results thereof.

14. Candidates, how nominated. [SECTION 2, ch. 451, laws of 1903, as amended by section 1, chapter 3, laws of 1905.] Hereafter, all candidates for elective offices shall be nominated:

1. By a primary held in accordance with this act, or

2. By nomination papers, signed and filed as provided by existing statutes.

3. Party candidates for the office of United States senator shall be nominated in the manner provided herein for the nomination of candidates for state offices.

This act shall not apply to special elections to fill vacancies nor to the office of state superintendent, to county and district superintendents of schools, to town, village and school district officers nor to judicial officers, excepting police justices and justices of the peace in cities.

A campaign committee cannot nominate a candidate and compel the proper officer to place his name on the general election ballot under a party name, where no such party candidate was named upon the primary election ballot and no nomination was made by said party at the primary election: *Corser vs. Scott* (Minn.), 91 N. W. 1101.

The primary election act (laws 1899, Minnesota) repeals by implication, as to all elective officers with its scope, the provisions of the general election law, providing for party nomination, and no political party can now nominate candidates for such office by a party convention: *State vs. Jenson*, 87 N. W. (Minn.), 1126.

15. Primaries, when and where held. [SECTION 3, ch. 451, laws of 1903.] 1. The September primary shall be held at the regular polling places in each precinct on the first Tuesday of September, 1906, and bi-ennially thereafter for the nomination of all candidates to be voted for at the next November election.

¹See paragraph 59.

2. Any primary other than the September primary shall be held two weeks before the election for which such primary is held.

16. Notice of primaries, how given. [SECTION 4, ch. 451, laws of 1903.] 1. At least sixty days before the time of holding such September primary, the secretary of state shall prepare and transmit to each county, town, city and village clerk, a notice in writing designating the offices for which candidates are to be nominated, at such primary.

2. Upon receipt of such notice, such county clerk, shall, not less than ten days thereafter, publish so much thereof as may be applicable to his county, once in each week for six consecutive weeks in at least two, and not to exceed four, newspapers of general circulation published in said county.¹

3. Each town, village, and city clerk shall within ten days after the receipt of such notice cause notice of such primary to be posted in three public places in each precinct in his town, city, or village; such notice shall state the time when, and place where, the primary will be held in each precinct therein, together with the offices for which candidates are to be nominated.²

***FORM OF COUNTY CLERK'S NOTICE OF PRIMARY.**

Notice of Primary Election

STATE OF WISCONSIN, { ss.
County of

County Clerk's Office.

Notice is hereby given that a primary election will be held in the several towns, villages, wards and election precincts of said county on the day of September, 190..., for the purpose of nominating candidates for the following offices to be voted for at the general election to be held on the day of November, 190...

(Here give list of offices.)

..... County Clerk.

Dated this day of, 190...

***FORM OF TOWN, CITY OR VILLAGE CLERK'S NOTICE OF PRIMARY.**

Notice of Primary Election

County of, Town, Village or City of

Town, Village or City Clerk's Office.

Notice is hereby given that a primary election will be held at (the town or village hall) (or at the regular polling places in each precinct) in said on the day of, 190... for the purpose of nominating candidates for the following offices to be voted for at the general election to be held on the day of, 190...

(Here give list of offices.)

Notice is further hereby given that the polls of said primary will be open from in the morning until in the evening.

..... Town, Village or City Clerk.

Dated this day of, 190...

4. In case of city elections, the city clerk shall cause one publication of such notice to be given, and shall also post such notice in three public places in each election precinct therein, such publication and posting to be not more than twenty and not less than ten days before such primary election.¹

5. Each county clerk shall, on the first Tuesday of June, 1906, and biennially thereafter, transmit to the secretary of state the name and postoffice address of each town, city, and village clerk in his county.

17. **Nomination papers, how prepared and signed.** [SECTION 5, ch. 451, laws of 1901, and sec. 1, ch. 5, laws of special session, 1905.] 1. The name of no candidate shall be printed upon an official ballot used at any primary unless at least thirty days prior to such primary a nomination paper shall have been filed in his behalf as provided in this act in substantially the following form:

I, the undersigned, a qualified elector of (the — precinct of the town of —) or (the — precinct of the — ward of the city of —), county of — and state of Wisconsin, and a member of the — party, hereby nominate —, who resides (at No. — on — street, city of —) or (in the town of —), in the county of —, as a candidate for the office of (here specify the office) — to be voted for at the primary to be held on the first Tuesday of September, 19—, as representing the principles of said party, and I further declare that I intend to support the candidate named herein.

NAME OF SIGNER.	IN CITIES.		Date of Signing.
	Street.	No.	
.....			

2. All nomination papers shall have substantially the above form written or printed at the top thereof. No signature shall

FORM OF CITY CLERK'S NOTICE OF CITY PRIMARY.

City Primary Election Notice.

County of, City of

City Clerk's Office.

Notice is hereby given, that a primary election will be held in the several wards and voting precincts of said city of, on the day of, 190.. for the purpose of nominating candidates for the following ward and city offices, viz., mayor, city clerk, city treasurer, assessor, aldermen for the following wards: First, second, third, (etc.), a supervisor for each of the following wards: First, second, third, (etc.), a

be counted unless they be upon sheets each having such form written or printed at the top thereof.

3. Each signer of a nomination paper shall sign but one such paper for the same office, and shall declare that he intends to support the candidate named therein; he shall add his residence, with the street and number, if any, and the date of signing.

4. For all nominations, except state officers, all signers of each separate nomination paper shall reside in the same precinct. For state officers, all signers on each separate nomination paper shall reside in the same county. The affidavit of a qualified elector shall be appended to each such nomination paper, stating that he is personally acquainted with all persons who have signed the same, and that he knows them to be electors of that precinct or county, as the nomination papers shall require; that he knows that they signed the same with full knowledge of the contents thereof and that their respective residences are stated therein and that each signer signed the same on the date stated opposite his name, and that he, the affiant, intends to support the candidate named therein. Such affidavit shall not be made by the candidate, but each candidate shall file with his nomination paper, or papers, a declaration that he will qualify as such officer if nominated and elected.¹

5. Such nomination papers shall be signed,—

(a) If for a state office by at least one per cent. of the voters of the party of such candidate in at least each of six counties in the state, and in the aggregate not less than one per cent. nor more than ten per cent. of the total vote of his party in the state.

justice of the peace for the following wards: First, second, third, (etc.), (if elected by wards), to be voted for at the city election to be held in said city on the day of, 190....

Notice is further hereby given, that the polls of said primary election will be open from until, at the regular polling places in said city.

.....
City Clerk.

Dated this day of, 190.

¹ FORM OF DECLARATION OF PERSON NOMINATED.

Declaration of Person Nominated.

I, ..., having been duly nominated by members of the party of the of as a candidate for nomination for the office of at the primary election to be held in the several towns, villages,* wards and election precincts of said on the day of, 190..., do hereby declare that if nominated and elected to the office of, I will qualify as such officer.

*If for city office omit words "towns, villages."

(b) If for a representative in congress, by at least two per cent. of the voters of his party in at least one-tenth of the election precincts in each of at least one-half of the counties of the congressional district, and in the aggregate not less than two per cent. nor more than ten per cent. of the total vote of his party in such district.

(c) If for an office representing less than a congressional district in area, or a county office, by at least three per cent. of the party vote in at least one-sixth of the election precincts of such district, and in the aggregate not less than three per cent. nor more than ten per cent. of the total vote of his party in such district.

The basis of percentage in each case shall be the vote of the party for the presidential elector receiving the largest vote at the last preceding presidential election.

But any political organization which at the last preceding general election was represented on the official ballot by either regular party candidates or by individual nominees only, may, upon complying with the provisions of this act, have a separate primary election ticket as a political party, if any of its candidates or individual nominees received one per cent. of the total vote cast at the last preceding general election in the state, or subdivision thereof in which the candidate seeks the nomination.

Nomination papers may also be filed for non-partisan candidates; such papers shall contain at least two per cent. and not more than ten per cent. of the total vote cast at the last preceding general election in the state, or subdivision thereof, in which the person is a candidate, such signers to be distributed in each case as required by the provisions of this act.

See notes to paragraph 61.

18. Nomination papers, where filed. [SECTION 6, ch. 451, laws of 1903, as amended by sec. 2, ch. 5, laws of special session, 1905.] All nomination papers shall be filed as follows:

1. For state officers, United States senator, representatives in congress, and those members of senate and assembly whose districts comprise more than one county, in the office of the secretary of state.

2. For offices to be voted for wholly within one county, in the office of the county clerk of such county.

3. For city officers, in the office of the city clerk.

4. When nomination papers shall be received which contain

ten per cent. of the total vote as limited in subdivisions a, b and c, of section 5 of this act, the clerk with whom such papers are required to be filed shall not receive or file further nomination papers for the candidate named therein.

19. Publication of names of candidates. [SECTION 7, ch. 451 laws of 1905.] At least twenty-five days before any primary preceding a general election, the secretary of state shall transmit to each county clerk a certified list containing the name and postoffice address of each person for whom nomination papers have been filed in his office, and entitled to be voted for at such primary, together with a designation of the office for which he is a candidate, and the party or principle he represents.

Such clerk shall forthwith upon receipt thereof publish under the proper party designation, the title of each office, the names and addresses of all persons for whom nomination papers have been filed, giving the name and address of each, the date of the primary, the hours during which the polls will be opened, and that the primary will be held at the regular polling places in each precinct.¹

¹ FORM OF COUNTY CLERK'S LIST OF CANDIDATES.

List of Candidates.

STATE OF WISCONSIN, } ss.
County of

I, ..., county clerk of said county of, do hereby certify that the following is a list of the names of all persons for whom nomination papers have been filed in the office of the secretary of state, as certified to me by the secretary of state, and of all persons for whom nomination papers have been filed in my office, and who are entitled to be voted for at the primary election to be held in the several towns, villages, wards and election precincts of said county, on the day of September, 190...

State Officers.	Demo- cratic.		National Republi- can.		Prohibi- tion.		Republi- can.		Social Demo- cratic.		Non- Parti- san.	
	Name.	Ad- dress	Name.	Ad- dress	Name.	Ad- dress	Name.	Ad- dress	Name.	Ad- dress	Name.	Ad- dress
Governor.....												
(Here give the other officers in like man- ner.)												

The said primary election will be held at the regular polling places in each precinct, and the polls will be open from o'clock in the morning until o'clock in the evening.

In testimony whereof, I have hereunto set my hand and affixed my official seal at this day of, A. D. 190...

County Clerk.

It shall be the duty of the county clerk to publish such notice for three consecutive weeks prior to said primary.

Such clerk shall also forthwith mail copies of such notice to each town, village, and city clerk of his county, who shall immediately post copies of the same in at least three public places in each precinct in his town, village or city, designating therein the location of the polling booth in each election precinct.¹

20. Publication of notices. [SECTION 3, ch. 451, laws of 1903.] Every publication required in this act shall be made in at least two, and not to exceed four newspapers of general circulation in such county or city, one of such newspapers shall represent the political party that cast the largest vote in such county or city at the preceding general election, and one of such newspapers shall represent the political party that cast the next largest vote in such county or city at the preceding general election.

In any case where the publication of a notice cannot be made, as hereinbefore required, it may be made in any news-

FORM OF LIST OF CANDIDATES POSTED BY TOWN, VILLAGE AND CITY CLERKS.

List of Candidates.

COUNTY OF } ss.
..... of

I, ... clerk of said of do hereby certify that the following is a list of the names of all persons for whom nomination papers have been filed in the office of the secretary of state and in the office of the county clerk of said county of, as certified to me by the said county clerk, and who are entitled to be voted for at the primary election to be held in on the day of, 19...

State Officer.	Democratic		National Republican		Prohibition		Republican		Social Democratic		Non-ar-tisan.	
	Name.	Ad-dress	Name.	Ad-dress	Name.	Ad-dress	Name.	Ad-dress	Name.	Ad-dress	Name.	Ad-dress
Governor												
(Here give the other officers in like manner.)												

The said primary election will be held at the (town or village hall) or at the regular polling places in each precinct), and the polls will be open from o'clock in the morning until o'clock in the evening. (Where municipality is divided into election precincts designate the location of each precinct.)

In testimony whereof I have hereunto set my hand at this day of, A. D. 190...

.....
Town, City or Village Clerk.

24. Conduct of Primaries—Manner of voting. [SECTION 12, ch. 451, laws of 1903, as amended by section 1, chapter 424, laws

..... day of, A. D. 190... ..
.....
Town, City or Village Clerk.

aper having a general circulation in the county or city in which the notice is required to be published.

21. Official ballots. [SECTION 9, ch. 451, laws of 1903.] An official ballot shall be printed and provided for use at each voting precinct in the form provided herein and annexed hereto. The names of all candidates for the respective offices, for whom the nomination papers prescribed shall have been duly filed, shall be printed thereon.

22. Preparation and distribution of ballots. [SECTION 10, ch. 451, laws of 1903.] 1. At least twenty days before the September primary each county clerk shall prepare sample official ballots, placing thereon, alphabetically, under the appropriate title of each office and party designation, the names of all candidates to be voted for in the precinct of his county, for whom nomination papers have been filed. Such sample ballot shall be printed upon tinted or colored paper and shall contain no blank endorsement or certificate.

2. Such clerk shall forthwith submit the ticket of each party to the county chairman thereof and mail a copy to each candidate for whom nomination papers have been filed with him as required by this act, to his postoffice address, as given on such nomination paper, and he shall post a copy of each sample ballot in a conspicuous place in his office.

3. On the tenth day before such primary the county clerk shall correct any errors or omissions in the ballot, cause the same to be printed and distributed as required by law in the case of ballots for the general election, except that the number of ballots to be furnished to each precinct shall be twice the number of votes cast thereat in the last preceding general election.

23. Expenses of primary, how paid. [SECTION 11, ch. 451, laws of 1903.] All ballots, blanks, and other supplies to be used at any primary, and all expenses necessarily incurred in the preparation for or conducting such primary, shall be paid out of the treasury of the city, county or state, as the case may be, in the same manner, and with like effect, and by the same officers as in the case of elections.

24. Conduct of Primaries—Manner of voting. [SECTION 12, ch. 451, laws of 1903, as amended by section 1, chapter 424, laws

of 1905, and chapter 2, laws of special session, 1905.] 1. The provisions of chapter 5 of the statutes of 1898 as amended by chapter 432 of the laws of 1905 as hereinafter amended shall be applicable to the conduct of primaries where not otherwise provided. Section 1, of chapter 432, of the laws of 1905, is hereby amended to read as follows: Section 1. Sub-section 1 of section 47 of the statutes of 1898 is hereby amended to read as follows:

The mayor of every city shall nominate to the common council thereof, at their first regular meeting in February of each year in which a general election is to be held, and if no such meeting is held, then at a special meeting, which he shall call for such purpose on the last Tuesday of said month, three persons for inspectors of election, two for clerks of election, and two for ballot clerks, in each election district therein.

The president of every village shall nominate to the board of trustees thereof, at their first regular meeting in February of each year in which a general or other election is to be held, under the provisions of this title, and if no such meeting is held, then at a special meeting, which he shall call for that purpose on the last Tuesday of said month, three persons for inspectors of election, two for clerks of election, and two for ballot clerks, in each election district therein.

Each of the persons so nominated shall be an elector in the district for which appointed; be able to read and write the English language understandingly, and shall not be a candidate to be voted for at such election, and not more than two of such inspectors, nor one of said clerks of election or ballot clerks so nominated, shall be of the same political party, but all such officers shall be chosen from the two parties which cast the largest vote in such district at the last preceding general election. The party which cast the largest vote being entitled to two inspectors, one clerk and one ballot clerk, and the party receiving the next largest vote shall be entitled to one inspector, one clerk and one ballot clerk. The basis in each case shall be the vote of the party for the presidential elector receiving the largest vote at the last preceding presidential election, and such inspectors, clerks and ballot clerks shall be chosen from a list submitted to the mayor of the city, or to the president of the village, for that purpose by the regular county committee or city committee of the aforesaid two parties. Such list shall be submitted by the chairman from each ward to the city or county committee, and only such persons so selected by the chairman from each ward shall act as such inspectors,

which list shall bear the signature of the chairman and secretary of said county or city committee. Such common council or board of trustees shall immediately approve or disapprove such nominations. If they disapprove as to any such nominee, the mayor or president shall immediately nominate another person, qualified as aforesaid, from the list of the two committees representing the two parties which cast the largest vote in said district in the last general election, and the mayor or village president shall continue to do so until the requisite number have been nominated and confirmed at such meeting. The persons so appointed inspectors, clerks, and ballot clerks, in cities, shall hold their offices for two years and until their successors are appointed and qualified, and shall act as such officers at every primary, general, municipal and special election following their appointment held within their respective districts, during such term. The persons so appointed in villages shall hold their offices until their successors are appointed and qualified and shall act at every election held under this title within their respective districts. Such inspectors shall fill any vacancy in their number, or in the number of such clerks by persons qualified as aforesaid, and may appoint one of their number as chairman.

2. The time of opening and closing the polls at primaries shall be the same as provided in section 49 of the Statutes of 1898, as amended by chapter 72 of the laws of 1899 and chapter 404 of the laws of 1901, and any amendments now or hereafter made thereto.

3. At all primaries there shall be an Australian ballot made up of the several party tickets herein provided for, all of which shall be securely fastened together at the top and folded, provided that there shall be as many separate tickets as there are parties entitled to participate in said primary election. There shall also be attached a non-partisan ticket upon which, under the appropriate title of each office shall be printed the names of all persons for whom nomination papers shall have been filed, as required by this act, who are not designated on such nomination papers as candidates of any political party, as defined by this act. The names of all candidates shall be arranged alphabetically according to surnames under the appropriate title of the respective offices and under the proper party designation upon the party ticket or upon the non-partisan ticket as the case may be. If any elector

write upon his ticket the name of any person who is a candidate for the same office upon some other ticket than that upon which his name is so written, this ballot shall be counted for such person only as a candidate of the party upon whose ticket his name is written, and shall in no case be counted for such person as a candidate upon any other ticket. In case the person is nominated upon more than one ticket, he shall forthwith file with the proper officer, or officers in charge of the preparation of the ballots, a written declaration indicating the party designation under which his name is to be printed on the official ballot. The ballots with the endorsements shall be in substantially the form heretofore annexed, provided that ballots for any city primary may be varied as to the title of the offices to be printed thereon, so as to conform to the law under which each such primary is held. The provisions of section 51, Statutes of 1898, so far as applicable shall govern the preparation of the ballot.¹ After preparing his ballot, the elector shall detach the same from the remaining tickets and fold it so that its face will be concealed and the printed endorsements and signatures or initials thereon seen. The remaining tickets attached together shall be folded in like manner by the elector who shall thereupon, without leaving the polling place vote the marked ballot forthwith, and deposit the remaining tickets in the separate ballot box to be marked and designated as the blank ballot box. Immediately after the canvass, the inspectors shall, without examination, destroy the tickets deposited in the blank ballot box.

25. Vacancies, how filled. [SECTION 13, ch. 451, laws of 1903.] Vacancies occurring after the holding of any primary shall be filled by the party committee of the city, district, county or state, as the case may be.

26. Voting and registration at primaries. [SECTION 14, ch. 451, laws of 1903, as amended by section 2, chapter 424, of the laws of 1905, and ch. 4, laws of special session, 1905.]
1. No person shall be entitled to vote at any primary unless a qualified elector of the precinct and duly registered therein, if registration thereat be required by law.

2. Except in cities of the first class every primary election day and the Monday next preceding shall be registration days where registration is required on which the inspectors shall

¹ See paragraph 104.

exercise the powers prescribed by sections 25 and 26, statutes of 1898,¹ but no person shall be registered on or after the day of holding the primary without personally appearing before the inspectors. In cities of the first class every primary election day and the Tuesday next preceding shall be registration days where registration is required on which the inspectors shall exercise the powers prescribed by sections 25 and 26, statutes of 1898, but no person shall be registered on or after the day of holding the primary without personally appearing before the inspectors. At least three days before the holding of a primary election the city clerk shall furnish the city committees of the various political parties with six copies of the printed registry lists, as compiled at the first registration, and only voters whose names appear on such registry lists shall be allowed to cast their ballot at a primary election, except it is shown by affidavit that the elector is a qualified voter and resident of the precinct, which affidavit must be corroborated by at least two freeholders, electors in said district.

3. The inspectors shall register any person who shall on any registration day file an oath or affirmation to the effect that he is a qualified elector in such precinct, or when they personally know him to be such.

4. Any person registered on either of said days as prescribed herein, shall be entitled to vote at the succeeding election without other registration.

5. There shall be no other registration day or days for either a primary, a general or a city election, except that prescribed by section 27, of the Statutes of 1898.²

6. No voter shall be required to register under the provisions of the act where registration is not now required by law.

7. The inspectors shall be in session for the purpose of registration from nine o'clock in the morning until eight o'clock in the evening, except that on the day of holding the primary they shall be in session during the time the polls are required to be held open. The inspectors and clerks shall receive the same compensation as provided in section 94h of the statutes of 1898, and any amendment now or hereafter made thereto.

27. Challenges. [SECTION 15, ch. 451, laws of 1903.] The party committee of each precinct may appoint in writing over

¹ See paragraphs 70 and 71.

² See paragraph 73.

their signatures, two party agents or representatives, with an alternate for each, who shall act as challengers for their respective parties, and have the power prescribed by section 46, Statutes of 1898.¹ The right of any person to vote at a primary may be challenged upon the same ground and his right to vote be determined in the same manner as at an election. The chairman of each party committee of any precinct may represent his party at the polling booth during the canvass and return of the vote at a primary, or he may appoint an agent or designate a member of his committee for that purpose.

28. Canvass of votes. [SECTION 16, ch. 451, laws of 1903.] Canvass of votes cast shall, except as herein otherwise provided, be made in the same manner and by the same officers as the canvass of an election. The party chairman of the precinct in a precinct canvass, of the county in a county canvass, of the state in a state canvass, or some duly appointed agent to represent each party shall be allowed to be present and observe the proceedings.

1. The precinct inspectors of election shall, on separate sheets, on blanks to be provided for that purpose, make full and accurate returns of the votes cast for each candidate, and shall within twenty-four hours cause to be delivered one copy of such returns as to each political party, to the county chairman of that party and also cause such returns to be delivered to the county clerk, if a September primary, or to the chairman of the city committee and city clerk, if a city primary,² provided always that such returns shall be sent by registered mail where practicable.

2. The county canvass of the returns of the September primary shall be made by the same officers and in the same man-

¹See paragraph 99.

***FORM OF INSPECTORS' STATEMENT, CITY PRIMARY.**

Inspectors' Statement.

..... Ticket.

Statement of the result of a primary election held in and for the..... precinct of the ward of the city of in the county of, State of Wisconsin, on the day of, 190..., setting forth the whole number of votes given for all the candidates for nomination for each office on the ticket, to be voted for at the ensuing election, the names of the persons for whom such votes were given and the number of votes given for each person.

The whole number of votes given for the nomination for the office of Mayor

ner provided in chapter 5, Statutes of 1898,¹ for the canvass of the returns of a November election. The canvassers shall meet and canvass such returns at ten o'clock on the Friday following the September primary. Their returns shall contain the whole number of votes cast for each candidate of each political party, and a duplicate as to each political party shall be delivered to the county chairman of such party.

3. The canvassers shall also make an additional duplicate return in the same form as provided in subdivision 2, showing the votes cast for each candidate not voted for wholly within the limits of the county. The county clerk shall forthwith send to the secretary of state by registered mail one complete copy of all returns as to such candidates, and he shall likewise send to the chairman of the state central committee of each party a duplicate copy of the returns last described relating to such candidates of each such party.

Merely on the statement of the board of primary inspectors, that a certain number of votes were cast for "Dr. John J. Evans," and without hearing any evidence, it cannot be assumed that all the votes were intended for the same person: *People vs. Hunt*, 77 N. Y. 973.

29. State board of canvassers, how constituted and governed. [SECTION 17, ch. 451, laws of 1903.] The board of canvassers, provided for by section 93, Statutes of 1898, to canvass returns of a November election, shall constitute the state board of canvassers of September primaries, and all the provisions of section 94 and 94b inclusive of said statutes relating to the canvass of the return of a November election, shall, as far as applicable, apply to the canvass, return and certification to the secretary of state of such primary.² Such board shall meet at the office of the secretary of state at ten o'clock a. m. on the third Tuesday of September next after the September primary.

30. Party candidates. [SECTION 18, ch. 451, laws of 1903.]

1. The person receiving the greatest number of votes at a pri-

on the	ticket was	(.....) of which number
.....	received	(.....) votes:
.....	received	(.....) votes:
.....	received	(.....) votes:
.....	received	(.....) votes:

(Here give result of vote for candidates for the other offices in like manner.)

We hereby certify that the foregoing statement is correct in all respects.

Dated, 190..

.....

Inspectors.

¹See paragraphs 134 and 135.

²See paragraphs 146, 147, 148 and 149.

mary as the candidate of a party for an office, shall be the candidate of that party for such office, and his name as such candidate shall be placed on the official ballot at the following election.

2. As soon as a state canvass of a primary shall be certified to him, the secretary of state shall publish, in the official state paper a certified statement of the result of such primary as to candidates for state officers, United States senator, and representatives in congress, and any other candidate whose district extends beyond the limits of a single county, and shall mail to the chairman of the state central committee of each party so much of such certificate as relates to his party.

The legislature may recognize the existence of political parties and within reasonable limits regulate the means by which partisan efforts are protected in exercising individual preferences for party candidates: *State vs. Moore* (Minn.), 92 N. W. 4.

The governing committee of a political party calling a primary for nominating candidates, pursuant to Kentucky statute, art. 12, regulating primary elections, has no right to question the eligibility of any candidate before the primary and for that reason refuse to place his name on the ballot. *Young vs. Beckham*, 72 S. W. Rep. 1092.

31. Secretary of state to certify to county clerks. [SECTION 19, ch. 451, laws of 1903.] 1. Not less than fourteen days before any November election the secretary of state shall certify to the county clerk of each county within which any of the electors may vote for the candidates for such offices, the name and description of each person nominated for any such office as specified in the nomination papers.

32. City board of canvassers; quorum; meetings, when held. [SECTION 20, ch. 451, laws of 1903, as amended by section 1, chapter 359, laws of 1905.] The canvass of the returns of a city primary shall be made by the city clerk and the chairman of the city party committees of the various recognized parties in such city, any two of whom shall constitute a quorum. Such board of canvassers shall meet at eleven o'clock in the forenoon of the day following the city primary and canvass the vote substantially as provided by sections 82 and 83, statutes of 1898.¹ They shall make and certify duplicate returns as to the votes cast for the candidates and forthwith certify and file one complete return with the city clerk and deliver

¹ See paragraphs 135 and 136.

so much of the other as relates to each party to the respective city chairman.¹ So far as applicable and not otherwise pro-

FORM OF STATEMENT AND DETERMINATION OF CITY BOARD OF CANVASSERS, WARD OFFICERS, PARTISAN TICKET, CITY PRIMARY.

Statement and Determination of City Board of Canvassers.

Ward Officers Ticket.

COUNTY OF { ss.
CITY OF

We, ..., city clerk, ..., chairman city committee, and, chairman city committee of the city of constituting a board of canvassers for said city, do hereby certify that from the statements of the inspectors of election in the ward of said city it appears that at the Primary Election held in said ward on the day of, 190..

The whole number of votes given for the nomination for the office of alderman of the ward of said city on the ticket was of which number

..... received votes:
..... received votes:
..... received votes.

(Here give result of the vote for candidates for the other offices in like manner.)

That we have determined that, a candidate of the party for the nomination for the office of alderman of the ward of said city, having received the greatest number of the votes of said party cast at said primary is nominated for the office of alderman of the ward of said city and is entitled to have his name placed on the official ballot as the nominee of said party for said office at the election to be held in said ward on the day of, 190..

(Here give the names of the persons nominated for the other offices in like manner.)

We hereby certify that the foregoing statement is correct in all respects.

Dated, 190..

..... City Clerk.
..... Chairman City Committee.
..... Chairman City Committee.
..... City Board of Canvassers.

FORM OF STATEMENT AND DETERMINATION OF CITY BOARD OF CANVASSERS, WARD OFFICERS, NON-PARTISAN TICKET, CITY PRIMARY.

Statement and Determination of City Board of Canvassers

Ward Officers, Non-Partisan Ticket.

COUNTY OF { ss.
CITY OF

We, ..., city clerk, ..., chairman city committee, and, chairman city committee of the city of constituting a board of canvassers for said city, do hereby certify that from the statements of the inspectors of election in the ward of said city it appears that at the Primary Election held in said ward on the day of, 190..

The whole number of votes given for the nomination for the office of alderman of the ward of said city on the non-partisan ticket was of which number

..... received votes:
..... received votes:
..... received votes:
..... received votes.

(Here give result of the vote for candidates for the other offices in like manner.)

That we have determined that, a non-partisan candidate for the nomination for the office of alderman of the ward of said city, having received the greatest number of the non-partisan votes cast at said primary is nominated for the office of alderman of the ward of said city and is entitled to have his name placed on the official ballot as a non-partisan nominee for said office at the election to be

vided herein, the provisions of this act shall apply to all city primaries, provided that nomination papers therefor shall be

held in said ward on the day of
A. D. 190..

(Here give the names of the persons nominated for the other offices in like manner.)

We hereby certify that the foregoing statement is correct in all respects.

Dated, 190..

..... City Clerk.

..... Chairman City Committee.

..... Chairman City Committee.
..... City Board of Canvassers.

**FORM OF STATEMENT AND DETERMINATION OF CITY BOARD OF CAN-
VASSERS, CITY OFFICERS, PARTISAN TICKET, CITY PRIMARY.**

Statement and Determination of City Board of Canvassers.

City Officers Ticket.

COUNTY OF..... } ss.
CITY OF..... }

We, ..., city clerk, ..., chairman city committee, and, chairman city committee of the city of, constituting a Board of Canvassers for said city, do hereby certify that from the statements of the inspectors of election of the several voting precincts of said city, it appears that at the primary election held in the several precincts of said city on the day of, 190..

The whole number of votes given for the nomination for the office of mayor of said city on the ticket was

of which number received votes;
..... received votes;
..... received votes;
..... received votes.

(Here give result of the vote for candidates for the other offices in like manner.)

That we have determined that, a candidate of the party for the nomination for the office of mayor having received the greatest number of the votes of said party cast at said primary is nominated for the office of mayor, and is entitled to have his name placed upon the official ballot as the nominee of said party for said office at the city election to be held in said city on the day of, 190..

(Here give the names of the persons nominated for the other offices in like manner.)

Tabular statement of the votes given for the candidates for nomination for the offices of Mayor, etc., on the ticket at the Primary Election held in the several wards and precincts of the City of, County of, State of Wisconsin, on the day of, 190..

Voting Precincts.	Mayor.	Treasurer.	City Clerk.	(Give vote for candidates for other offices in like manner.)
.....				
.....				

We hereby certify that the foregoing statement is correct in all respects.

Dated, 190..

..... City Clerk.

..... Chairman City Committee.

..... Chairman City Committee.
..... City Board of Canvassers.

filed at least fifteen days, a list of candidates posted and published at least ten days,¹ and the official ballot printed at least four days before the day of holding such primaries.

FORM OF STATEMENT AND DETERMINATION OF CITY BOARD OF CAN-
VASSERS, CITY OFFICERS, NON-PARTISAN TICKET, CITY PRIMARY.

Statement and Determination of City Board of Canvassers.

City Officers, Non-Partisan Ticket.

COUNTY OF..... } ss.
CITY OF..... }

We, ..., city clerk, ..., chairman, city committee, and, chairman, city committee of the city of, constituting a Board of Canvassers for said city, do hereby certify that from the statements of the inspectors of election of the several voting precincts of said city, it appears that at the primary election held in the several precincts of said city on the day of, 190...

The whole number of votes given for the nomination for the office of mayor of said city on the non-partisan ticket was of which number

..... received votes.
..... received votes.
..... received votes.
..... received votes.

(Here give result of the vote for candidates for the other offices in like manner.)

That we have determined that, a non-partisan candidate for the nomination for the office of mayor, having received the greatest number of the non-partisan votes cast at said primary is nominated for the office of mayor, and is entitled to have his name placed upon the official ballot as a non-partisan nominee for said office at the city election to be held in said city on the day of, 190...

(Here give the names of the persons nominated for the other offices in like manner.)

Tabular statement of the votes given for the candidates for nomination for the offices of Mayor, etc., on the non-partisan ticket at the Primary Election held in the several wards and precincts of the City of, County of, State of Wisconsin, on the day of, 190...

Voting Precincts.	Mayor.	Treasurer.	City Clerk.	(Give vote for candidates for other offices in like manner.)
.....				
.....				

We hereby certify that the foregoing statement is correct in all respects.

Dated, 190..

..... City Clerk.

..... Chairman City Committee.

..... Chairman City Committee.

City Board of Canvassers.

FORM OF CITY CLERK'S LIST OF CANDIDATES, CITY PRIMARY.

List of Candidates.

COUNTY OF..... } ss.
CITY OF..... }

I, ..., city clerk of said city, do hereby certify that the following is a list of the names of all persons for whom nomination papers have been filed in my office, and who are entitled to be voted for at the primary

33. Party committees. [SECTION 21, ch. 451, laws of 1903, as amended by section 2, chapter 359, laws of 1905.] 1. At the September primary each voter may write in the space left on his ticket for that purpose the names of not to exceed three qualified electors of the precinct for members of his party precinct committee. The three having the highest number of votes shall constitute such committee, and the one having the largest vote shall be chairman. The official return made by the inspectors shall show the name and address of each party committeeman chosen.

2. The party committee of each county shall consist of one ward chairman from each ward in the city, one member from each township and one member from each village, who shall be a chairman of a party precinct committee and who shall be elected by a majority of the members of the different precinct committees in such ward of such city, township or village respectively. The chairman of the county committee shall call a meeting of the various precinct committees in each respective ward of such city, township and village for the purpose of electing a representative to such county committee. Such meeting shall be held two days after the holding of such primaries. Such meeting shall be called by an official call which shall be published ten days before the holding of such primaries in a newspaper of general circulation in the city or county where such primaries are held. The assembly district

election to be held in the several wards and precincts of said city on the day of, 190...

	Democrat.		National Republican.		Prohibition.		Republican.		Social Democratic.		Non-Partisan.	
	Name.	Street address.	Name.	Street address.	Name.	Street address.	Name.	Street address.	Name.	Street address.	Name.	Street address.
Mayor.....												
(Here give the other offices in like manner.)												

The said primary election will be held at the regular polling places in each precinct, and the polls will be open from o'clock in the morning until o'clock in the evening. The polling both in the precinct of the ward is located at
 In testimony whereof I have hereunto set my hand and affixed my official seal this day of, 190...

[Seal]

City Clerk.

committee shall consist of the party chairman of each precinct in such city, county or district; the state senatorial district committee of the chairman of the assembly district committees in such senatorial district; the congressional committee of the party chairman of the senatorial district committee wholly or partially within such congressional district; the state central committee as hereinafter provided. Each such committee shall choose its officers by ballot excepting as herein provided. Five days after the members of the various precinct committees have met and elected a representative to the county committee from the various wards in cities and from villages, and townships in such county, the chairman of the county committee shall call a meeting of the various chairmen of the precinct committees in each assembly district, for the purpose of electing a chairman who shall be a member of the senatorial district committee of such city, village and township in such county, and five days following the election of the members of the senatorial district committee the chairman of the county committee shall call a meeting of the various senatorial district committees for the purpose of electing a chairman, who shall be a member of the congressional district committee in such city, village and township in such county, wholly or partially within such congressional district. Provided, however, in case such assembly or senatorial district is composed of more than one county, such meeting shall be called by the chairman of the state central committee.

3. Each committee and its officers shall have the powers usually exercised by such committees, and by the officers thereof, in so far as is consistent with this act. The various officers and committees now in existence shall exercise the powers and perform the duties herein prescribed until their successors are chosen in accordance with this act. At all meetings of said city, county and assembly district committees each ward or precinct chairman, as the case may be, shall have one vote for every fifty votes, or major fraction thereof, cast by his party in his respective ward or precinct, as the case may be, at the last general election, each such chairman also to have at least one vote for each precinct in his ward, the vote at such general election to be determined as provided in section 5 of this act. The duties of the party ward chairman, when he shall be unable to perform the same, shall be performed by a member of any party precinct committee in his ward designated by him. The duties of the chairman or

secretary of any other committee may be performed by members of such committee, selected by such chairman or secretary. Any vacancy in any committee office shall be filled in the same manner as that in which such officer was originally chosen, except that in the case of a vacancy in the chairmanship of a precinct committee, the committee shall elect one of its members to fill such vacancy.

34. Party platform. [SECTION 22, ch. 451, laws of 1903, as amended by section 1, chapter 79, laws of 1905.] The candidates for the various state offices and for senate and assembly nominated by each political party at such primary, and senators of such political party, whose term of office extends beyond the first Monday in January of the year next ensuing shall meet at the capitol at twelve o'clock noon on the fourth Tuesday of September after the date on which any primary is held preliminary to any general election. They shall forthwith formulate the state platform of their party. They shall thereupon proceed to elect a state central committee of at least two members from each congressional district and a chairman of such committee, and perform such other business as may properly be brought before such meeting. The platform of each party shall be framed at such time that it shall be made public, not later than six o'clock in the afternoon of the following day.

35. Miscellaneous provisions. [SECTION 23, ch. 451, laws of 1903.] 1. In case of a tie vote, the tie shall forthwith be determined by lot by the canvassers.

2. It shall be the duty of the secretary of state and attorney general, on or before July 1st, 1905, to prepare all forms necessary to carry out the provisions of this act, which forms shall be substantially followed in all primaries held in pursuance hereof. Such forms shall be printed with copies of this act for public use and distribution.¹ Every day on which a September primary shall be held shall be a legal holiday.

36. The penal provision. [SECTION 24, ch. 451, laws of 1903, as amended by sec. 3, ch. 5, laws of special session 1905.] 1. Any person who shall offer, or with knowledge of the same, permit any person to offer for his benefit any bribe to a voter

¹Blanks for city primaries are not furnished by the secretary of state. Forms for such blanks are printed herein which should be followed. All blanks necessary for the September Primary are furnished by the secretary of state and the forms for such blanks are therefore not printed herein.

to induce him to sign any nomination paper and any person who shall accept any such bribe or promise of gain of any kind in the nature of a bribe as consideration for signing the same, whether such bribe or promise of gain in the nature of a bribe be offered or accepted before or after such signing, or any candidate who shall knowingly cause a nomination paper, or papers, to be signed in his behalf by more than the maximum number of qualified electors provided for his district by subdivision 5 of section 5 of this act, shall be guilty of a misdemeanor and upon trial and conviction thereof be punished by a fine of not less than twenty-five nor more than five hundred dollars or by imprisonment in the county jail for not less than ten days nor more than six months, or by both such fine and imprisonment.

2. Any act declared an offense by the general laws of this state concerning caucuses and elections shall also, in like case, be an offense in all primaries, and shall be punished in the same form and manner as therein provided, and all the penalties and provisions of the law as to such caucuses and elections except as herein otherwise provided, shall apply in such case with equal force, and to the same extent as though fully set forth in this act.¹

3. Any person who shall forge any name of a signer or witness to a nomination paper shall be deemed guilty of forgery, and on conviction punished accordingly. Any person who, being in possession of nomination papers, entitled to be filed under this act, or any act of the legislature, shall wrongfully either suppress, neglect, or fail to cause the same to be filed at the proper time in the proper office shall on conviction be punished by imprisonment in the county jail not to exceed six months, or by a fine not to exceed five hundred dollars, or by both such fine and imprisonment in the discretion of the court.

Primary elections are so far matters of public concern that they are, at the discretion of the legislature, proper objects of reasonable statutory regulation under its police power: *Hopper vs. Stack*, 56 Atl. Rep. 1.

37. General election laws to apply. [SECTION 25, ch. 451, laws of 1903.] The provisions of the statutes now in force in relation to the holding of elections, the solicitation of voters at

¹ See paragraphs 333 to 361, inclusive.

the polls, the challenging of voters, the manner of conducting elections, of counting the ballots and making return thereof, and all other kindred subjects, shall apply to all primaries in so far as they are consistent with this act, the intent of this act being to place the primary under the regulation and protection of the laws now in force as to elections.

38. Conflicting laws repealed. [SECTION 27, ch. 451, laws of 1903.] All acts or parts of acts inconsistent with or in conflict with the provisions of this act are hereby repealed.

PART III.

OF CAUCUSES FOR ALL TOWNS, CITIES, AND VILLAGES EXCEPT CITIES IN COUNTIES OF MORE THAN TWO HUNDRED THOUSAND POPULATION.

Note. Ch. 341, laws of 1899, is repealed by implication by ch. 451, laws of 1903, so far as it relates to officers to be nominated under the latter act. Such officers as are exempted from the operation of ch. 451, laws of 1903, may still be nominated under ch. 341, laws of 1899. Opinion of Attorney General.

Scope of law—Caucus, what is, 39.

Names of members of city or county committee; date of caucus; committee's power, 40.

Vacancies in committee; officers of executive committee, 41.

Notice of caucuses—Conventions, when held, 42.

Qualifications of voter at caucus, 43.

Caucus officers; inspectors, and oath, 44.

Voting to be by ballot, 45.

Secretary of caucus to make poll list, etc., 46.

Canvass and return of votes, 47.

Bribery of voter; disturbance of caucus or convention, 48.

Penalties, 49.

39. Scope of law—Caucus, what is. [Sec. 1, ch. 341, laws of 1899.] Caucuses and meetings of political parties, held for the purpose of nominating candidates² or choosing delegates to assemble in convention to nominate any person for any public office, to be voted for at any general, judicial or municipal election held in all cities, towns and villages in this state, except in counties having a population of two hundred thousand or more, whether operating under the general or

¹ See part IV for law governing cities of this character.

² In the opinion of the attorney general chapter 341 of the laws of 1899 does not apply to the nomination of town and village officers.

special charter and all meetings for nominating candidates or choosing delegates to conventions to nominate candidates to be voted for at such elections, commonly called caucuses unless held under the provisions of this act, are hereby declared to be unlawful and no political party shall have its political ticket placed upon the official ballot, or canvassed at such election, unless the nomination of its candidates are made in accordance with the provisions of this act. The meetings of electors in any town, village or ward, held for the purpose of nominating candidates or electing delegates as aforesaid, are hereby defined as caucuses and declared to be such. In all cases wherein this act shall apply, the caucuses in cities or villages for a political party in the precincts of a county, shall be called for said one county and held on the same day, and in cities said caucuses shall be held during the same hours, but no caucuses shall be held open for less than one hour.

OPINION OF ATTORNEY GENERAL AS TO COUNTIES OF MORE
THAN TWO HUNDRED THOUSAND POPULATION.

MADISON, Wis., Jan. 2, 1900.

Hon. WM. H. FROELICH,
Secretary of State,
Madison, Wis.

Dear Sir:—You have called my attention to the evident conflict between section 1 and section 12 of chapter 341 of the laws of 1899, and requested an opinion as to what are the caucus laws for towns and villages in counties of more than 200,000 population.

In reply will say that, as you suggest, section 1, as it appears in the printed session laws, provides, among other things, that, "caucuses and meetings of political parties * * * * held in all cities, towns and villages in this state, except in counties having a population of 200,000 or more * * * * and all meetings for nominating candidates or choosing delegates to conventions to nominate candidates to be voted for at such elections, commonly called caucuses unless held under the provisions of this act, are hereby declared to be unlawful."

Section 12 is as follows: "Section 11a, 11b, 11c, 11d, 11e, 11f, 11g, 11h and 11i of chapter 5 of the Wisconsin statutes of 1898, and all acts and parts of acts in conflict with the provisions of this act, so far as do not relate to cities in counties having a population of two hundred thousand or more, are hereby repealed."

Sections 11a to 11i inclusive of the Wisconsin statutes, which are repealed by said section 12, except so far as do not relate to cities in counties having a population of 200,000 or more, contain the provisions of the statutes of 1898 relative to caucuses. It is apparent that if section 1 and section 12 of chapter 341 are construed literally, the towns and villages in counties having a population of 200,000 or

more are without any laws relative to caucuses. It does not seem reasonable that the legislature could have intended this.

I find upon examination of the Journals of the legislature that section 1 of the substitute for No. 126, A., recommended for passage by the committee and as passed, read as follows: "Caucuses and meetings of political parties * * * held in all cities, towns and villages in this state, except *in cities* in counties having a population," etc. It so appears in the printed files of the Assembly. No amendment was made, striking out from section 1 of substitute No. 126, A., the words "in cities." However, in the engrossed bill and in the enrolled bill these words are omitted and are, of course, omitted in the printed session laws where it appears as chapter 341.

It is evident that the omission of the words "in cities" from the engrossed bill was a clerical error, and that it was the intention of the legislature when passing chapter 341 to provide a uniform caucus law for all cities, towns and villages in the state, except in cities in counties having a population of 200,000 or more.

Yours truly,

E. R. HICKS,
Attorney General.

40. Names of members of city or county committee; date of caucus; committee's power. [Sec. 2, ch. 341, laws of 1899.] Every political party desiring to nominate candidates to be voted for at any election as hereinbefore provided, shall file with the city or county clerk, the name of the chairman and secretary of the county, or city committee¹ of such political party, who shall be electors of such county or city, and shall have been elected by the county or city convention, called for the purpose of nominating candidates to be voted for in said county or city or at any such election, and the names of such officers of the county or city committee shall be embodied in the nomination papers filed with the county or city clerk, certifying the nomination of candidates, and the term of office of such officers of the county or city committee shall commence immediately after such nomination papers have been filed. The respective county or city committees shall determine the day and place when and where the conventions² of the political party it represents shall be held,

¹ See form under paragraph 51.

***FORM OF ORDER OR RESOLUTION DETERMINING THE TIME AND PLACE OF HOLDING THE COUNTY CONVENTION AND CAUCUSES.**

STATE OF WISCONSIN, } ss.
_____ County.

At a regularly called meeting of the county committee of the _____ party of said county, at which were present (*here name members of committee present*).

On motion of _____, it was resolved and determined:

1. That the county convention of said party, in said county, to nominate candidates for the following offices to be elected at the ensuing (*general, special, judicial or municipal*) election, viz.: (*Here specify the offices for which candidates are to be selected*), be held at the (*specify place, building or hall*) in the

3—E. L.

and also the day upon which the caucuses of such political party shall be held for each town, village and ward, and the number of delegates which shall represent each town, village or ward at such convention apportioned in such manner as provided by the several county or city committees, and shall also designate the officers for which candidates shall be nominated at such caucus; and such committee shall also designate all offices for which, according to law, candidates are to be voted for at the next ensuing election.

41. Vacancies in committee—Officers of executive committee. [Sec. 3, ch. 341, laws of 1899.] The county or city committee shall have authority to fill all vacancies in said committee, caused by resignation or otherwise, and the county or city clerk shall at once be notified by the chairman and secretary of the committee of all such changes. The county or city committee shall be composed of a chairman, secretary and one member for each ward, town or village. The county or city committee may also provide for the election of a treasurer and an assistant secretary, and for the appointment by the chairman, of an executive committee composed of five electors, who, together with the chairman, secretary and treasurer, shall constitute the executive committee.

42. Notice of caucuses—Conventions, when held. [Sec. 4, ch. 341, laws of 1899.] Whenever the several county or city

city or village of —, on —, the — day of —, 190—, at — o'clock in the afternoon.

2. That the caucuses in the several caucus districts, wards, towns and villages be held on the — day of —, 190—, opening at the hour of — and continuing as provided by law, at the following places respectively; and that the number of delegates from each, be as follows, namely:

Ward, Town, Village.	Place of holding Caucus.	Number of Delegates to be chosen.
First ward of —.....	At A's Hall, — street. ...	Four delegates.
Town of —.....	At Town Hall.....	Three delegates.
Village of —.....	At Village Hall.....	Two delegates.
Caucus district No. —.....	At —.....	Two delegates.

We certify the above to be correct.

Dated —, 190—.

—, Secretary of Committee.

—, Chairman of Committee.

[If a ward, town or village is divided into caucus districts the order should specify the boundaries of each such district with particularity.]

[Caucuses must be held open at least one hour.]

committees shall determine on the day and time of holding such caucuses,¹ the chairman of each of such committees, representing his political party, may cause to be published, at least ten days before the day of such caucus, in at least one daily newspaper, if nominations are to be made, to be voted for at municipal elections, provided there be such a daily newspaper published in said city, if not then in a weekly newspaper, and if for general elections, in two newspapers published in the county, a notice stating the time and place where such caucuses and conventions will be held. In towns where no newspapers are published, notices for caucuses shall be posted in three public places at least ten days before the day of holding such caucuses.

Posting notices. See note to paragraph 190.

43. Qualifications of voter at caucus. [Sec. 5, ch. 341, laws of 1899.] No person shall vote or offer to vote more than once for any candidate or delegate or set of delegates in any one caucus, nor in any caucus held in any caucus district in which he shall not at the time be a resident and duly qualified elector, and no person shall vote or offer to vote in any caucus where candidates and delegates are to be chosen, if he has already voted at the caucus of any other political party for candidates to be voted for, or for delegates to be chosen to a convention to nominate candidates to be voted for at the next ensuing election. Any person violating the provisions of this act shall be guilty of a misdemeanor.

Resident and duly qualified elector. See notes to paragraphs 1, 75.

44. Caucus officers—Inspectors—Oath. [Sec. 6, ch. 341, laws of 1899.] The caucus officers under the provisions of this act, shall consist of a chairman, a secretary and two tellers. The chairman of the caucus in the several caucus districts affected by this act, shall be the chairman of the town committee; in his absence a chairman may be chosen by the electors present at the opening of the caucus; the secretary and the tellers shall be chosen by the electors present at the opening of the caucus. The chairman and secretary shall act as inspectors at such caucus, and shall on taking their places,

¹ See form under paragraph 40.

make oath¹ that he will faithfully, honestly and correctly conduct the election to be held at such caucus, protect it from all fraud and unfairness, truly, with the assistance of the tellers, canvass all the votes cast thereat, and in every way comply with the carrying out of the provisions of this act.

45. Voting to be by ballot. [Sec. 7, ch. 341, laws of 1899.] It is hereby provided, that all caucuses held under the provisions of this act, all votes, the result of which might be the election of a delegate to any political convention, or the nomination of a candidate for any political office, shall be by ballot; said ballot shall be printed on plain white paper or may be written by the individual voter, and shall be deposited by said voter in a box or other receptacle provided therefor by the caucus officers, which box or receptacle shall be in full view of the chairman, secretary, tellers and voters at such caucus, and shall not be removed from such position until the ballot shall have been declared closed, when the contents thereof shall be removed and votes canvassed by the proper officers of the caucus, as provided for under the provisions of sections 6 and 9 of this act.

46. Secretary of caucus to make poll list—Poll list to be filed—Registry lists to be furnished. [Sec. 8, ch. 341, laws of 1899.] The secretary of said caucus, with the aid of an assistant if necessary, shall make a true and correct poll list of the voters who cast a ballot at such caucus, giving name, and in cities, residence street and number, and such list shall be filed with the city, town or village clerk. In cities where the registration is had, the city clerk shall furnish caucus officers with six copies of the printed registry list. These registry lists shall be furnished the several ward committees

FORM OF OATH OF CAUCUS INSPECTOR.

STATE OF WISCONSIN. { ss.
County.

I, (name) having been appointed as caucus inspector of the — party in the — ward of the city of — (or in the town or village of —), for the term of one year from the — day of —, 190—, do solemnly swear (or affirm) that I am an elector of said ward, (or town, or village) for which I am appointed; that I will faithfully, honestly and correctly conduct the election to be held at the caucus of said party therein: protect it against all fraud and unfairness; carefully and truly, with the assistance of the tellers, canvass all votes cast thereat and in every way comply with and carry out the provisions of chapter 341 of the laws of 1899, relating to the holding of caucuses. So help me God.

Subscribed and sworn to before me, this — day of —, 190—. _____, Notary Public, etc.

at least one day before the holding of said caucus, and only voters whose names appear on such registry list shall be allowed to cast their vote at said caucus, except it is shown by affidavit¹ that the elector is a qualified voter and resident of the said caucus district, which affidavit must be corroborated by at least two freeholders,¹ electors in said caucus district. The committee having charge of the caucus shall have authority to maintain order and to enforce obedience to the lawful rules during the caucus.

47. Canvass and return of votes. [Sec. 9, ch. 341, laws of 1899.] Immediately after the close of the caucus, and after the canvass of the votes, the chairman and secretary of the caucus shall certify to the chairman of the city or county committee,² the names of the delegates so chosen at the caucus, giving the vote of the several candidates, and the persons receiving the majority of votes shall be legally elected

1 OATH OF CHALLENGED ELECTOR.

STATE OF WISCONSIN, { ss.
County.

A— B—, being duly sworn, says that he is a resident and qualified elector of — ward of the city of — (or of the town or village of —, in said county), and that he is duly qualified to vote at said caucus under the provisions of ch. 341, laws of 1899.

Subscribed and sworn to before me this — day of —, 190—.
—, Notary Public, etc.

1 AFFIDAVIT OF FREEHOLDERS.

STATE OF WISCONSIN, { ss.
County.

— and —, being each first duly sworn, each on oath, for himself, says that he resides in the village of —, or the — ward of the city of —, that he is a freeholder and elector in said election precinct; that he is personally acquainted with —, whose name appears subscribed to the foregoing affidavit, that he knows of his own knowledge that said —, was entitled to vote at the last general election, held in and for said election district, and has not become disqualified by reason of removal from said election district or for any other cause since said election; that said — now resides in said town or village or at number —, street in said ward or caucus district, and that he has reason to believe that the statements made by said — in his affidavit are true and correct.

Subscribed and sworn to before me this — day of —, 190—,
— [Official title.]

2 FORM OF RETURN OF THE RESULT OF THE CAUCUS.

TO THE CHAIRMAN OF THE COUNTY COMMITTEE OF THE — PARTY IN — COUNTY

Return of the caucus of the — party, held in the — ward of the city of — (or town or village of —, in the county of —), on the — day of —, 190—, pursuant to law and notice given by the county committee of said party, for the election of delegates to the county convention to be held for said party in said county, on the — day of —, 190—; and for the nomination of candidates for the offices of —, to be voted for at an election to be held on the — day of —, 190—.

We, the undersigned chairman and secretary for said party in said ward (or town or village) do hereby certify that pursuant to notice given by the county committee of said party, we duly opened said caucus at the place and time appointed and kept the same open as required by law; that the whole number of

as such delegates, to represent said caucus district. In case of nomination of candidates for office, the name of the candidate receiving a majority of all the votes shall be declared the nominee of the caucus, and his election shall be certified to the proper officers, to be placed upon the official election ballot.

48. Bribery of voter—Disturbance of caucus or convention. [Sec. 10, ch. 341, laws of 1899.] Every person who by bribery, or corrupt or unlawful means, prevents or attempts to prevent any voter from attending or voting at any caucus mentioned in this act, or who shall give or offer to give, any valuable thing or bribe to any officer, inspector or delegate, whose office is created by this act, or who shall give or offer to give any valuable thing or bribe to any elector as a consideration for some act to be done in relation to such caucus or convention, or who shall interfere with or in any manner disturb any caucus or convention held under the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished in the manner hereinafter provided.

Bribery. See note to paragraph 333, and paragraphs 338, 339, 340

49. Penalties. [Sec. 11, ch. 341, laws of 1899.] If any person shall be convicted of a violation of any of the provisions of this act, for which no punishment is herein provided, or who shall be convicted of a misdemeanor under the provisions of this act, he shall be punished by a fine of not exceeding two hundred dollars, or by imprisonment in the county jail, not less than two nor more than six months, or by both such fine and imprisonment, in the discretion of the court. The district attorney of the county is hereby authorized and empowered to conduct prosecutions for violations of this act upon complaint of a duly qualified elector of the caucus district in which such violation of this act may have occurred.

See paragraphs 338, 339, 340.

votes cast for delegates to represent said ward (or town or village) in said county convention was —, of which A B received —; C D received —; E F received —, etc.; that the whole number of votes cast for the nomination of a candidate for the office of —, was — of which G H received —; I J received — (continuing until all the officers for which nominations were made are specified); and that said ballots or tickets were cast in pursuance of sections 1 to 12, both inclusive of chapter 341, of the laws of 1899.

Dated this — day of —, 190—.

— —, Chairman.
— —, Secretary.

PART IV.

OF CAUCUSES IN COUNTIES OF MORE THAN TWO HUNDRED THOUSAND POPULATION.

Scope of law—Caucus, what is, 50.

Names of members of city or county committee; date of caucus; committee's power, 51.

Chairman of committee in city of first class—Notice of caucuses—Conventions, when held, 52.

Booths and supplies for caucus—Caucus districts—Committee's powers, 53.

Caucus inspectors, appointment and oath; removal of, 54.

Preliminary meeting, call for and proceedings of, 55.

Registry list to be furnished—Who may vote, 56.

Caucus officers—Preparation and marking of ballots—Oath of challenged elector—Canvass and return of votes, 57.

50. Scope of law—Caucus, what is. [Sec. 11a, Statutes of 1898.] Caucuses and meetings of political parties for the purpose of nominating candidates or choosing delegates to a convention to nominate a candidate for any office to be voted for at any general election, in any city, at any city election, except as is hereinafter provided, at any general or city election in any city of the first class, at all city elections in cities of the second, third and fourth classes² which shall adopt the provisions of sections 11a to 11i inclusive, and at all elections in villages and towns which shall adopt said provisions in accordance with section 11i, unless held under the provisions

¹ Sec. 12 of chapter 341, laws of 1899, repeals sections 11a, 11b, 11c, 11d, 11e, 11f, 11g, 11h, 11i, of the Wisconsin Statutes of 1898, so far as they "do not relate to cities in counties having a population of two hundred thousand or more." Hence the caucus laws for such cities are the sections mentioned, with the exception of 11i.

² See opinion of attorney general, page 32.

³ For the law classifying cities, see paragraph 255.

of this and the six next following sections, shall not entitle the political party holding the same to have its ticket placed upon the official ballot or votes cast therefor at any such election canvassed. The meetings of electors in any town, village or ward, held for the purpose of nominating candidates or choosing delegates for the purpose aforesaid, are hereby defined as caucuses, and any person who shall vote or offer to vote at any such caucus, unless at the time of so doing he shall be a qualified elector of the district for which the caucus at which he votes or offers to vote is held, shall be punished as provided by law. The provisions of this and the six next following sections shall not apply to city elections in cities of the second, third or fourth class until they shall have adopted the same in the manner provided in section 114.

51. Names of members of city or county committee; date of caucus; committee's power. [Sec. 11b, Statutes of 1898.] Every political party desiring to nominate candidates to be voted for at any such election shall file with the county or city clerk the name of the chairman, secretary and members of its county or city committee,¹ who shall be electors of such county or city, and shall have been elected by the county or city convention called for the purpose of nominating candidates to be voted for in said county or city at any such election, and the names of such members of such committee shall be embodied in the nomination papers filed, respectively, with the county or city clerk certifying the nomination of candidates, and the term of office of all members of either such committee shall commence immediately after such papers have been filed. The respective county or city committee shall determine the day and place when the conventions of the political party it represents shall be held, and also the day upon which the caucus of such political party shall be held

FORM OF STATEMENT OF NAMES OF OFFICERS AND MEMBERS OF COUNTY COMMITTEE.

STATE OF WISCONSIN, { ss.
County, }

The undersigned, chairman and secretary of the county convention of the _____ party, a political organization of the county of _____, held pursuant to notice, at _____, on the _____ day of _____, 190____, do hereby, for and in behalf of said party in said county, certify that _____ is chairman and _____ is secretary, and that _____, _____, _____, are members of the county committee of the political party represented by said convention as constituted by the action of said convention, and were chosen as such members for the term of, etc., and that all persons herein named as officers or members of said committee are electors of said county.

_____, Chairman.
_____, Secretary.

Dated this _____ day of _____, 190____.

for each town, village or ward, the number of delegates which shall represent each town, village and ward in such conventions, the offices for which candidates shall be nominated at such caucus, and designate all offices for which, according to law, candidates are to be voted for at the next ensuing election.

52. Chairman of committee in city of first class—Notice of caucuses—Conventions, when held. [Sec. 11c, Statutes of 1898.] Whenever a city election shall be held in any city of the first class, whether operating under a special or general charter, as hereinbefore provided, and the chairman of the county committee be a resident of such city, he shall act as chairman, and the members of the county committee representing such city shall be the members of the city committee. Said committee shall fix and determine the day and place of holding the convention and the number of delegates which shall be chosen from each ward of said city to act in said convention, designate the offices for which candidates shall be nominated at such caucuses, and determine the day upon which the caucuses of the political party which it represents shall be held in each ward.¹ The caucuses of one political party shall be held upon the same day, and no more than one political party shall hold caucuses on the same day. In case the chairman of the county committee is not a resident of such city, then the members of the county committee resident therein shall elect a resident of the city to act as chairman of their city committee. Whenever either such committee shall determine the time of holding such caucuses, the chairman thereof shall cause to be published in at least one daily newspaper, if nominations are to be made to be voted for at city elections, and, if for general or town or village

¹ FORM OF ORDER OR RESOLUTION DETERMINING THE TIME AND PLACE OF HOLDING THE COUNTY CONVENTION, PRELIMINARY MEETINGS AND CAUCUSES.

STATE OF WISCONSIN, } ss.
County.

At a regularly called meeting of the county committee of the ——— party of said county, at which were present (*here name members of committee present*).

On motion of ———, it was resolved and determined:

1. That the county convention of said party, in said county, to nominate candidates for the following offices to be elected at the ensuing (*general, special, judicial or municipal*) election, viz.: (*Here specify the offices for which candidates are to be selected*), be held, at the (*specify place, building or hall*) in the city or village of ———, on ———, the ——— day of ———, 190—, at ——— o'clock in the afternoon.

2. That the preliminary meeting of the electors of said party to propose delegates and candidates to be voted for at the caucuses hereby called will be held

election, in at least two newspapers published in the county and advocating the principles of the party, a notice¹ stating the time and place where the preliminary meetings, caucuses

at the places hereinafter specified at — o'clock, on the — day of —, 190—.

3. That the caucuses in the several caucus districts, wards, towns and villages be held on the — day of —, 190—, opening at the hour of — and continuing as provided by law, at the following places respectively, and that the number of delegates from each be as follows, namely:

Ward, Town, Village, Caucus District.	Place of holding Caucus.	Number of Delegates to be chosen.
First ward of —.....	At A's Hall, — street.....	Four delegates.
Town of —.....	At Town Hall.....	Three delegates
Village of —.....	At Village Hall	Two delegates.....
Caucus district No.....	At —	Two delegates.....

We certify the above to be correct.

Dated —, 190—.

—, *Chairman of Committee.*

—, *Secretary of Committee.*

[If a ward, town or village is divided into caucus districts the order should specify the boundaries of each such district with particularity.]

* FORM OF NOTICE OF THE COUNTY CONVENTION AND CAUCUSES.

Notice.

— COUNTY CONVENTION AND CAUCUSES.

The county convention of the — party of — county will be held at — (specify hall, etc.) on —, the day of —, 190—, at two o'clock in the afternoon, as determined by the county committee, to nominate candidates for the following offices to be voted for at the ensuing (general, special, judicial or municipal) election, viz.: — (here specify the offices to be voted for).

The caucuses of said party in the several wards, towns and villages of said county, to elect delegates to said convention, will be held on —, the — day of —, 190—, at the places, and as required by chapter 5, Wisconsin Statutes of 1898, at the hours designated below, respectively, to choose the number of delegates to said convention, as determined by the county committee, as follows:

Ward, Town, Village or Caucus District.	Place of holding Caucus.	Hours of Caucus.	Number of Delegates.
First ward of —.....	Election precinct booth at — (place)	From 4 P. M. to 8 P. M.	Four.
Second ward of —.....	Election precinct booth at —.....	From 4 P. M. to 8 P. M.	Four.
Town of —.....	Election booth	From 4 P. M. to 8 P. M.	Four.
Village of —.....	Election booth	From 4 P. M. to 8 P. M.	Three.
Caucus ditrict No.....	Election booth at —.....		

Dated, —, 190—.

By order of the County Committee.

—, *Secretary.*

—, *Chairman of the County Committee.*

[In cities in counties having a population of more than two hundred thousand, the caucuses must open at 12 o'clock noon.]

and conventions will be held; such notice shall be published for at least two successive days, not less than eight nor more than sixteen days prior to the time fixed for the holding of the preliminary meetings. The city conventions shall be held not more than two days following the holding of the caucuses of the respective parties, and county and district conventions shall be held not more than three days after the day of the holding of such caucuses. The caucuses shall be held and conducted in the precinct election booth located nearest to the center of the caucus district where held, unless the county committee shall designate some other precinct booth in said caucus district, in which event such caucus shall be held at the booth so designated, and shall open in any city of the first class, whether operating under a special or general charter, or counties having a population of more than two hundred thousand, at twelve o'clock noon, and in all other cities at four o'clock in the afternoon, and in all cases close at eight o'clock in the evening of the same day.

53. Booths and supplies for caucus—Caucus districts—Committee's powers. [Sec. 11d, Statutes of 1898.] The proper officers of every city, village and town in which these provisions shall be in effect shall cause booths to be erected at said place and at said time for such purposes, and furnish the necessary furniture, ballot-boxes, heat and light; and whenever a ward in any city, any village or town constitutes more than two election districts, the county or city committee may subdivide such ward, village or town, into caucus districts for the accommodation of electors, and shall state in its call the location of the caucus booth for each such district and the election districts for which said booths have been assigned; provided, that in all cities where provision for election booths is not made by law, the caucuses shall be held in some suitable building in each caucus district, to be designated by such committee and located as centrally as may be with regard to the convenience of all electors in the district; but no caucus shall be held in a room where intoxicating liquors are sold or in any room communicating therewith. The county or city committee shall have authority to fill all vacancies in said committee caused by resignation or otherwise, and the county or city clerk shall at once be notified of all such changes by the chairman and secretary of the committee. The county or city committee shall be composed of

a chairman, secretary and one member for each ward, town or village, and the member elected from each ward, town or village shall be chairman of such ward, town or village committee. Such committee shall also provide for the election of a treasurer and may appoint an assistant secretary and provide for the appointment by the chairman of an executive committee composed of five electors, who, together with the chairman, secretary and treasurer, shall constitute the executive committee.

54. Caucus inspectors, appointment and oath; removal of. [Sec. 11e, Statutes of 1898.] There shall be appointed annually, on or before the first day of February, by the county or city committee, three electors of each town, village and ward for each caucus district, who shall act as inspectors¹ at every caucus held therein of the political party for which they act, and every elector so appointed shall, before entering upon the discharge of his duties, within ten days from the time of his appointment, make oath² that he is an elector of the town, village or ward for which he is appointed; that he will faithfully, honestly and correctly conduct the election to be held at such caucus, protect it against all fraud and unfairness, truly canvass all the votes cast thereat, and in every way

¹ FORM OF APPOINTMENT OF CAUCUS INSPECTORS.

STATE OF WISCONSIN, } ss.
County.

The county committee of the _____ party, a political organization of said county, does hereby appoint _____ and _____, qualified electors of the town, caucus district (*ward or village*) of _____, in said county, as caucus inspectors for said party in said town (*ward or village*) pursuant to section 11e, Wisconsin Statutes of 1898, for the period of one year from the _____ day of _____, 190____, unless this appointment shall sooner be revoked as to all or any of said persons.

Dated this _____ day of _____, 190____.

By order of said committee.

_____, *Chairman of County Committee.*
_____, *Secretary of County Committee.*

² FORM OF OATH OF CAUCUS INSPECTOR.

STATE OF WISCONSIN, } ss.
County.

I, (*name*) having been appointed as caucus inspector of the _____ party in the _____ ward of the city of _____ (or in the town, caucus district, No. _____, or village of _____), for the term of one year from the _____ day of _____, 190____, do solemnly swear (*or affirm*) that I am an elector of said ward, (*or town, or village*) for which I am appointed; that I will faithfully, honestly and correctly conduct the election to be held at the caucus of said party therein; protect it against all fraud and unfairness; carefully and truly canvass all votes cast thereat and in every way comply with and carry out the provisions of chapter 5 of the Wisconsin Statutes of 1898, relating to the holding of caucuses. So help me God.

Subscribed and sworn to before me, this _____ day _____, 190____,
_____, *Notary Public, etc.*

comply with the carrying out of the provisions of law relating thereto. Such oath shall be filed with the county or city clerk within said ten days. Such inspectors shall thereafter have full authority to administer the oaths necessary to carry on said caucuses in the manner provided by law. Said county or city committee may at any time prior to the opening of the caucus remove any inspector so appointed and appoint another in his place, who shall qualify in like manner. In case any inspector shall fail to appear at the time fixed for opening such caucus, the inspector or inspectors present shall appoint some elector, resident of the district in which such caucus is held, in the place of such absent inspector, and shall administer to such person the oath provided for in this section. The chairman, secretary and three inspectors shall be a canvassing board, who shall faithfully, honestly and correctly canvass all votes cast at the caucus, and in every way comply with the provisions of law.

55. Preliminary meeting, call for and proceedings of. [Sec. 11f, Statutes of 1898.] The chairman of the county or city committee shall call a preliminary meeting of the electors of his party in each ward, village and town, to be held four days prior to the time fixed for holding the caucus of his party, to propose delegates and candidates to be voted for at the caucus. The chairman of the ward, village or town, or, in his absence, an inspector shall open the meeting. After the election of a chairman and secretary of the meeting, who by virtue of such election shall also act as chairman and secretary of the caucus, the chairman shall declare nominations open for delegates and candidates in the order given in the call,¹ and the names proposed shall be written on ballots by the secretary and placed in a ballot-box furnished by the county or city committee. Such ballots shall be of uniform color and size, and no other ballots shall be used at such preliminary meeting. The chairman, before entertaining a motion "that nominations be closed," shall first put the question, repeating the same once: "Are there any further nominations?" Such action shall be taken and every opportunity given electors

¹ FORM OF DECLARING PRELIMINARY MEETING OPENED OR CLOSED.

Hear ye! Hear ye! Hear ye! The preliminary meeting of the electors of the (name) party for the — ward of —, (or village or town of —) to propose delegates and (or) candidates for the caucus of said party to be held on the — day of —, 190—, between the hours of — and —, P. M., is now open (or closed).

56. Registry lists to be furnished—Who may vote. [Sec. 11g, Statutes of 1898.] The board of registry of each election district shall, at least two days prior to the day fixed for the

TO THE SECRETARY OF THE COUNTY COMMITTEE OF THE ——— POLITICAL PARTY, A
POLITICAL ORGANIZATION OF ——— COUNTY.

At a preliminary meeting of the electors of the _____ party, a political organization of the _____ ward (*or town or village*) of _____ county, held in said ward, (*or town or village*) pursuant to notice given by the chairman of the county committee of said party for said county, between the hours of _____ and _____, on the _____ day of _____, 190_____, the following named persons _____, _____, _____, _____, _____, were proposed in the order in which they are designated as delegates to be voted for at a caucus of the electors of said ward (*town or village*) called for the _____ day of _____, 190_____, to represent the said electors in a county convention of the said party for said county to be held on the _____ day of _____, 190_____; and the following named persons _____, _____, _____, _____, _____, were proposed in the order in which their names are given as candidates to be voted for at said caucus for the office of _____, (*continuing until all the offices to be filled by the electors of the ward are enumerated*).

Dated this — day of —, 190—.

— —, Chairman of said meeting.
— —, Secretary of said meeting.

caucus to be held in the ward, village or town in which such district is situated, deliver to the chairman of the county or city committee six copies of the printed registry list of electors entitled to vote in such district at the ensuing election, and the failure or refusal of any such board to so do shall operate to forfeit all compensation provided by law to be made to every member thereof, and they shall thereafter be ineligible to act as inspectors of election. The registry list shall be delivered to the caucus officers by the chairman of the county or city committee, and only voters whose names appear on such list shall be allowed to cast their vote at said caucus, if challenged, in which case it shall be shown by affidavit that the person offering to vote is a qualified voter and resident of the caucus district in order to entitle him to vote, each of which affidavits shall be substantiated by the affidavits of two freeholders, electors in such district, corroborating all the material statements therein. No person whose name appears on the ballot to be voted for at the caucus except as a candidate for a delegate to convention shall act as caucus officer or be permitted in the booth, except to vote, until after the close of the caucus.

57. Caucus officers—Preparation and marking of ballots—Oath of challenged elector—Canvass and return of votes. [Sec. 11*h*, Statutes of 1898.] The chairman selected at the preliminary meeting, or, in his absence, any caucus inspector shall, upon the day fixed in the call, open the caucus at the time and place designated, and the electors present shall elect a new chairman, and in the absence of the secretary a new secretary; the chairman and secretary together with the inspectors shall act as officers of the caucus. The secretary of the county or city committee shall have prepared and delivered to the inspectors a sufficient number of official tickets in the original sealed package, and at the opening of the caucus the package shall be opened and the tickets conveniently placed for the use of the voters, but no distribution of such tickets shall be allowed outside of the booths. Such tickets shall be placed in charge of the secretary, who shall deliver to each elector entitled to vote, as he enters the booth, one ticket, and no more than one shall be furnished to any one elector unless he returns the one first furnished as having been erroneously prepared or spoiled by accident or mistake; but no voter shall receive to exceed three in all. The ticket shall contain the

¹ OATH OF CHALLENGED ELECTOR.

Subscribed and sworn to before me this ____ day of ____, 190____.
_____, Notary Public, etc.

— and —, being each first duly sworn, each on oath, for himself, says that he resides in the village of —, or the — ward or census district of the city of —, that he is a freeholder and elector in said election pre-

trict, in so far that they know the challenged voter to be a resident and elector of the district, and have reason to believe that the statements made in his affidavit are true and correct. Immediately after the close of the caucus the canvassing board shall count every official ballot cast, and verify such canvass in the presence of all persons desiring to attend whose names appeared on the ballot voted at such caucus, or one authorized agent for each such person, and immediately upon its being determined what persons have received the highest number of votes as such delegates or candidates respectively, they shall cause the same to be announced in a loud voice, burning all the ballots or tickets cast, and immediately send verified proper returns¹ to the secretary of the county or city committee which ordered said caucus to be held, together with

_____ cinct; that he is personally acquainted with _____, whose name appears subscribed to the foregoing affidavit, that he knows of his own knowledge that said _____, was entitled to vote at the last general election, held in and for said election district, and has not become disqualified by reason of removal from said election district or for any other cause since said election; that said _____ now resides in said village or at number _____ street in said ward or caucus district, and that he has reason to believe that the statements made by said _____ in his affidavit are true and correct.

Subscribed and sworn to before me this _____ day of _____, 190____.

[Official title.]

¹ FORM OF RETURN OF THE RESULT OF THE CAUCUS.

TO THE SECRETARY OF THE COUNTY COMMITTEE OF THE _____ PARTY IN _____ COUNTY.

Return of the caucus of the _____ party, held in the _____ ward of the city of _____ (or town or village of _____, in the county of _____), on the _____ day of _____, 190____, pursuant to law and notice given by the county committee of said party, for the election of delegates to the county convention to be held for said party in said county, on the _____ day of _____, 190____; and for the nomination of candidates for the offices of _____, to be voted for at an election to be held on the _____ day of _____, 190____.

We, the undersigned caucus officers for said party in said ward (or town or village) do hereby certify, and each severally on oath declare that pursuant to notice given by the county committee of said party, we duly opened said caucus at the place and time appointed and kept the same open as required by law; that the whole number of votes cast for delegates to represent said ward (or town or village) in said county convention was _____, of which A. B. received _____; C. D. received _____; E. F. received _____, etc.; that the whole number of votes cast for the nomination of a candidate for the office of _____, was _____, of which G. H. received _____; I. J. received _____, (continuing until all the officers for which nominations were made are specified).

That we, immediately after counting the official ballots cast at such caucus, in the presence of all persons desiring to attend who may have been voted for at such caucus, or one authorized agent for each such person announced the result of the canvass in a loud voice and burned all the ballots or tickets cast; that said ballots or tickets were cast in pursuance of section 11a-11h, both inclusive, of the Wisconsin Statutes of 1898, and only ballots or tickets were received from electors of said ward (village or town) who voted the ticket of the political party for which said caucus was held at the last general election.

Accompanying this return is the checked registry list used or poll list made and affidavits received at said caucus.

Dated this _____ day of _____, 190____.

_____, Chairman.
_____, Secretary.
_____, Caucus Inspector.
_____, Caucus Inspector.
_____, Caucus Inspector.

the checked registry list used or poll list made and affidavits received at such caucus. Any member of the canvassing board who shall make any false return of the action of the caucus or of any vote cast thereat shall be punished in the manner provided by law for making a false return of any election. If two or more persons shall have received the greatest and an equal number of votes, the tie shall be decided in the manner provided in section 806.²

² Paragraph 207.

PART V.

OF THE NOMINATION OF CANDIDATES.

Note.—Certain provisions in this part appear to be in conflict with provisions of chapter 451, laws of 1903. Where there is such conflict the provisions of chapter 451, laws of 1903, prevail so far as relates to officers to be nominated under said act. As to officers which are excepted from the operation of chapter 451, laws of 1903, the provisions herein prevail.

Provisions applicable to what elections, 58.

Manner in which nominations made, 59.

Certificate of nomination, what to contain, 60.

Filing nomination papers and certificates, 61.

Nominations to be certified to county clerk, 62.

Nomination, how declined; filling of vacancy—Votes for deceased nominee, 63.

Right of candidates to party name, 64.

County and municipal clerk's notice of nominations, 65.

Information to voters; fee for publishing, 66.

58. Provisions applicable to what elections. [Sec. 29, Statutes of 1898.] The mode of nominating candidates and the preparation and use of official ballots, as hereinafter prescribed, shall apply to all general elections in all towns, cities, villages, wards and election districts; to all regular city elections, to all judicial elections, except as herein provided; to all special elections for officers whose election is required by law to be at a general election, when such special election is to be held at the same time and place as the general election, but not to other special elections.

59. Manner in which nominations made. [Sec. 30, Statutes of 1898, as amended by sec. 2, ch. 351, laws of 1899.] Candidates to be voted for at the elections to which this title applies may be nominated in the following manner:

First. By a convention or primary meeting held for the purpose, consisting of an organized assemblage of electors or

delegates representing a political party which at the last preceding general election before such convention polled at least one per cent of the entire vote cast in the state, county or other district or division, for which the nomination is made, for its candidate receiving the highest number of votes.

Second. In nominations for city officers, by a convention of at least thirty electors of the city or at least nine delegates chosen for the purpose; if for a ward office, at least ten electors of the ward must have participated in the caucus or ward meeting to nominate.

Third. A candidate for any such office may be nominated by a nomination paper¹ or papers containing his name, the

FORM OF NOMINATION PAPER.

The undersigned, qualified electors and voters of the (state, county, district or city) of —, in accordance with the provisions of chapter 5, Wisconsin Statutes of 1898, make the following nomination for the office specified below, namely:

Name of Candidate. (Give christian name in full. Middle name, if any, may be by initial letter.)	Office for which nominat'd.	Business or vocation.	Residence.			Party or political principle represented expressed in not more than five words.
			Town, city or village.	Street.	Number.	

Signature of voters.	Business.	Residence.		
		Town, village or city.	Street.	Number.

STATE OF WISCONSIN, } ss.
County of —.

Personally came before me this — day of —, A. D. 190—, who, being first duly sworn, on oath says that he resides in and is a qualified elector of — (name election district) in the (town, village or city of —) that he is personally acquainted with each and all persons who have signed the foregoing nomination paper, that they and each of them are electors, and that their residence and place of business are truly stated in said nomination paper.

Affiant further says that he is not a nominee in such paper, nor a candidate for any office to which it is intended as a nomination paper.

Subscribed and sworn to before me this — day of —, A. D. 190—.

Notary Public, — County, Wis.

NOTE.—This affidavit may be sworn to before any officer authorized to administer oaths.

office for which he is nominated, his business or vocation, his residence, with street and number, if any, and the party or principle which he represents, expressed in not more than five words. Such paper shall be signed, if for an officer to be voted for throughout the state, by at least one thousand voters of the state; if for an officer to be elected by a county, district, or other division less than the state, by a number of voters thereof not less than one-half of one per cent of the whole number of votes cast therein at the last general election preceding such nomination and at least fifteen voters; if for a ward office in a ward polling less than one hundred and fifty votes, by at least ten electors of such ward; and if for a ward office in a ward polling more than that number of votes, by at least twenty electors thereof. Signatures need not be upon the same paper.

Each voter can sign for but one nomination to the same office; he shall add to his signature his business and residence, street and number, if any. But in using words to express the party or principles represented by a candidate nominated by a nomination paper, if the same name is used as pertains to some political party making a nomination by convention, the words "nomination paper" shall be used as a part of such designation. To each separate nomination paper containing signatures must be appended an affidavit, sworn to by some qualified elector, to the effect that he is personally acquainted with all the persons who have signed the foregoing nomination paper; that they are electors, and that their residence and business are truly stated in such paper. But such affidavit shall not be made by any person who is a nominee in such paper, or a candidate for any office to which it is intended as a nomination paper.

If the convention or caucus is held in a county, city, village, ward or other district or division created or the boundaries of which have been changed since the last preceding general election, the certificate of the officers of such convention or caucus that the political party represented therein cast, at such election, in the territory comprising the county, city, village, ward or other district or division for which such convention or caucus is held, at least one per centum of the entire vote cast in the territory now embraced therein, shall be prima facie evidence of the fact so recited; and if nominations are made by nomination papers in any such county, city, village or other district or division concerning which no other pro-

vision is made herein, the affidavits of two electors who have signed such papers to the effect that they are signed by not less than one per centum of the whole number of votes cast at such election in the territory now embraced therein shall be prima facie evidence of that fact.

Nominations by conventions; validity of provision. A limitation of the right to have ballots printed at the public expense by providing that nominations can only be made by conventions representing parties which polled a certain per cent. of the vote cast at the last general election is not in violation of a declaration in a constitution that elections shall be free and equal, and that all laws regulating them shall be uniform throughout the state. The court said: "This contention is plausible but unsound. The act does not deny to any voter the exercise of the elective franchise because he happens to be a member of a party which at the last general election polled less than three per cent. of the entire vote cast. The provision referred to is but a regulation, and we think a reasonable one, in regard to the printing of tickets. The use of official ballots renders it absolutely necessary to make some regulations in order to ascertain what names shall be printed on the ballot." *De Walt v. Bartley*, 146 Pa. St. 529, 543, 24 Atl. Rep. 185. The same view has been held in New Jersey, where the point was made that the labor of gathering signatures and putting nomination papers or petitions into shape was an unconstitutional discrimination against a class of voters and in favor of members of the older and larger political parties. It was answered that the right in the exercise of which it was claimed the voter was embarrassed is not the right to vote, but the right to form a party and vote as one of that party: *State v. Black*, 24 Atl. Rep. 489. It has been held in Missouri that the Australian ballot law is not invalid because of the declaration in the fundamental law that all elections shall be free and open: *State v. McMillan*, 18 S. W. Rep. 784. In *Miner v. Olin*, 159 Mass. 487, it was held that provisions of the statute requiring that a party should cast three per cent. of the entire vote or that the caucuses of a party should be composed of at least twenty-five voters in order that the names of its candidates might be printed on the official ballots was not invalid. See the opinion of Marshall, J., in *State v. Anderson*, 100 Wis. 523, 533-537, to much the same effect as the cases cited in this paragraph.

A political party. There may be the prescribed number of votes cast at the preceding election to constitute the aggregation of voters a political party, but if the body does not avow or proclaim a dogma or doctrine which invites support from the community at large, and not a section or fragment of it, and which is necessarily antagonistic to the tenets of recognized organizations, or some of them, it cannot be a political party according to the legislative intent. A party comes within this definition and is not entitled to a place on the ballot if it is made up of several co-operating elements which have ordained no creed, adopted no platform, issued no declaration of principles, promulgated no fellowship of opinion or purpose in respect to public affairs or in opposition to the well-defined principles of established parties, and to become a member of which no change of faith nor absolution of allegiance from existing parties is required: *Nomination of Jeffries*, 9 Pa. Dist. Rep. 663.

Where a convention was regularly called by the committee and the unchallenged delegates chosen, though less than a majority of the whole effected a temporary organization and seated one of two contesting delegations, it was held to be the regular convention, and its nominee was entitled to have his name put on the official ballot: *Beckwith v. Rucker*, 62 Pac. Rep. 836 (Colorado).

A convention is the exclusive judge of the qualifications and credentials of persons claiming seats therein, and a minority of the delegates, as determined by the convention, cannot, by withdrawing therefrom and joining themselves to the persons whose credentials have been rejected, constitute a legal party convention. *State v. Lavik*, 83 N. W. Rep. 914 (North Dakota).

There may be the prescribed number of votes cast at a preceding election to constitute the aggregation of votes a political party, but if the body does not proclaim a dogma or doctrine which invites support from the community at large, and not a section or fragment of it, and which is necessarily antagonistic to the tenets of recognized organizations, or some of them, it cannot be a political party according to legislative intent: *In re Jeffries* 24 Pa. Co. Ct. R. 529.

Delegation of power by convention. A political convention may delegate to a committee appointed by it the power to make a nomination for it, and a nomination so made after the convention has adjourned is valid. In this case the resolution gave the committee power "to fill all vacancies that now exist or that may hereafter occur." It was held that the power to fill a vacancy existed independently of the statutory power to make a substituted nomination: *State v. Benton*, 34 Pac. Rep. 301. To the same effect is a Minnesota case: *White v. Sanderson*, 76 N. W. Rep. 1020.

Candidates nominated by papers are not the nominees of a political party, but of the individual electors nominating them, and only as such are entitled to have their names placed upon the ballot: *Atkeson v. Lay*, 22 S. W. Rep. 481, 484.

If two nomination papers are made in favor of the same candidate, one of them good, the other bad, the latter does not affect the former: *Northcote v. Pulsford*, L. R. 10 C. P. 476, 484.

Signatures to a nomination paper cannot be withdrawn unless the statute so provides. Hence where a regular nomination has been made the name of the nominee must be placed on the ballot though a number of persons who signed such paper afterwards file a paper withdrawing their signatures, thereby reducing, if such withdrawal was valid, the number of signatures below that required: *Sterling v. Jones*, 87 Md. 141, 39 Atl. Rep. 424.

Voter's signature. A statute expressing that "every voter signing a nomination paper shall sign the same in person, and shall add to his signature his place of residence," etc., means "that a voter shall, with his own hand, write his name and address; if anything less than this is permitted, the signing must be done at the request of the voter and in his presence. Previous authority or subsequent ratification is not enough:" *Commonwealth v. Connelly*, 163 Mass. 539.

Nomination by non-electors void. An English statute provides that "at any election of councillors to be held for any borough or ward,

any person entitled to vote may nominate for the office of councillor himself (if duly qualified) or any other person or persons so qualified (not exceeding the number of persons to be elected for the borough or ward), and every such nomination shall be in writing," etc. It has been ruled that where a municipal borough is divided into wards, the person nominating a candidate must be entitled to vote in the particular ward for which he nominates, and if he be entitled to vote only in another ward, his nomination and the election of the candidate are void: *Queen v. Parkinson*, L. R. 3 Q. B. 11 (1867).

Nomination by mass convention. For construction of the Minnesota statute, see *Mauston v. McIntosh*, 60 N. W. Rep. 672.

Regularity of proceedings of convention. See *Beck v. Board of Election Commissioners*, 103 Mich. 192. The mere fact that in a political convention a candidate receives a majority of the votes cast on a ballot taken for the purpose of making a nomination does not, in the absence of fraud or oppression, prevent the convention from declaring such ballot irregular and proceeding to choose a candidate in the way the majority of the delegates may direct. In such a case the person who received the majority of the votes on such ballot is not the candidate of the convention unless its subsequent action makes him so: *Phillips v. Gallagher*, 76 N. W. Rep. 235 (Minn.).

The majority of the delegates to a convention who meet on the day to which the convention regularly adjourned, though less than a majority of all the delegates or of those present at the first meeting of the convention, may rescind a nomination made at such meeting: *Phillips v. Smith*, 55 Pac. Rep. 172 (Colorado).

Where a nomination regularly made has not been declined delegates to the convention which made cannot, on being irregularly called together thereafter, nominate a candidate whose name can be placed on the ballot as the representative of the party. *People v. Board of Police Commissioners*, 31 N. Y. Supp. 112.

Where the chairman of a convention through misapprehension announces that a certain person has been nominated as a result of a ballot and the convention acquiesces in such announcement without protest or objection, and adjourns sine die, the courts will consider that such nomination was regularly made: *State v. Moore*, 62 Pac. Rep. 769.

Convention. In a Montana case (*State v. Tooker*, 46 Pac. Rep. 530) it was sought to have the names of persons placed on the official ballots as the candidates of the silver republican party, under authority purporting to come from a certificate of nomination made by the county committee of that party. It appeared that the nominations were made at a meeting participated in by less than fifty members of a silver republican club of some four hundred members; that most of the nominees were not members of that party, but had been nominated by various other parties; that no primaries were held, no delegates chosen, no call for a convention made, nor any notice given thereof other than information of the club's proceedings published as a news item, and that the chairman who presided at the meeting and signed the certificate of nomination did not know till after it was filed that the meeting was a convention. *Held*, that it was not a convention, and that the names of the persons nominated were not entitled to a place on the official ballot.

Nomination by party not polling sufficient vote at last election. The "Socialist Labor" party, so-called, is a political organization of the state, and while it could not by failure to poll sufficient votes at the last general election, secure a nomination for governor by convention, it could nominate a candidate therefor by a suitable petition under Gen. Stats., 1894, §40, and secure such candidate, a party name and place on the official ballot. *Davidson v. Hanson* (Minn.), 92 N. D., 93.

Where minority delegates elected to a county democratic convention seceded on the ground that the majority faction was dominated by corporate influences, and caused a separate convention to be called, at which a ticket designated as the "Bryan Democratic Ticket" was nominated, such ticket was entitled to a place on the official ballot under such designation, since, the court held, there was a sufficient distinctive principle in such designation, in connection with the facts, to warrant the conclusion that the differences were actual and substantial. *State v. Arms*, 63 Pac. Rep. 401 (Montana).

Where a regular republican county convention was duly called, and a rival convention was called without authority, each claiming to represent the party, and the delegates of the latter had been refused recognition by the state convention, thereafter adopting the name "Eighth Hour Republican Party," it was held that the nominees of such convention were not entitled to have their names appear on the ballot: *State v. Moran*, 63 Pac. Rep. 390 (Montana).

One per cent. of the vote cast in the state, etc. The corresponding clause of the Illinois statute provides that any convention of delegates, caucus or meeting representing a political party which at the general election next preceding polled at least two per cent. of the entire vote cast in the state, or in the electoral district, etc., may nominate, etc. This was construed to mean that a political party which polled two per cent. of the total vote cast in the state at the next preceding general election held throughout the state may certify its nominations and have its nominees placed as candidates on the official ballot for any and all offices to be filled at any and all elections held in the state or in any electoral division or district thereof until such party shall at some future general election held throughout the state fail to poll two per cent. of the total vote thereof, and that such authority is not lost or affected by the failure of such party to poll two per cent. of the votes cast at an election held in a judicial district of the state after the said next preceding general state election and prior to the next succeeding general state election: *People v. Williamson*, 185 Ill. 106.

60. Certificate of nomination, what to contain. [Sec. 31, Statutes of 1898.] Nominations made by a convention or caucus shall be evidenced by a certificate in writing specifying as to each candidate:

First. His name, giving Christian name in full; middle name, if any, may be by initial letter.

Second. His business or vocation.

Third. His place of residence, with street and number, if any.

Fourth. The party or principle he represents, expressed in not more than five words; the date of holding the convention or caucus at which the candidate was nominated; which certificate shall be signed by the presiding officer and secretary thereof, who shall add to their signatures their respective business, place of residence, street and number, if any, and make oath or affirm before some officer qualified to administer oaths that the affiants were such officers, and that the statements contained in such certificate are true to the best of their knowledge and belief. In the same certificate, as a further statement, such officers shall give the names and postoffice addresses of the persons appointed as a committee to represent the party and may state what powers were delegated to such committee; and such statement shall be prima facie evidence of their appointment and that the powers so stated were granted.

Christian name in full. The English election act directs that the nomination paper shall state the surname and other names of the persons nominated, according to the form given in the schedule. Robert Vriars Mather was nominated for town councillor and his second name was given as V. An objection to the sufficiency of his nomination was sustained "with great reluctance:" *Mather v. Brown*, 1 C. P. Div. 596 (1876).

Defects in certificates. In a Wyoming case objections were raised to certificates because they did not state that the nomination was made by an organized assemblage of electors or delegates representing a political party, the statement being "that the convention making the nomination is democratic." The answer to this objection was that the law did not require such a statement, and that it was sufficiently apparent from the certificate that the nomination was made by a convention. Another objection was that the certificate did not show when or where the nomination was made, what house of representatives it was for, or for what county. The answer was as before as to the first two objections; as to the last, that when the certificate became public by being filed in the county clerk's office, there could be no danger of any misunderstanding. The affidavits to the certificates were made upon belief, the word "knowledge" being omitted. This defect was admitted to be serious; but because there was no provision in the statute indicating an intent that these requirements should be mandatory, it was held that the irregularities stated did not affect the validity of the election: *State v. Barber*, 32 Pac. Rep. 14, 25.

A certificate which fails to give the residence or business address of any of the candidates purported to be nominated and which fails to state the places of residence, the business addresses of the presiding officer and secretary of the convention or primary meeting at which such nominations were made, in accordance with the terms of the statute, is properly rejected by the officer who is asked to file it: *Lucas v. Ringsrud*, 3 S. D. 355, 53 N. W. Rep. 426.

In a Montana case the provisions of the statute concerning certificates are regarded as mandatory, and the election of one whose name is put upon the official ballot without compliance with those provisions is void. The court held that, inasmuch as the statute was borrowed from a foreign country and was silent as to the interpretation it should receive, it was to be construed according to the rules of the courts of the country whence it was borrowed. *Price v. Lush*, 24 Pac. Rep. 749. This rule of construction is pronounced "monstrous" by a Wyoming judge and is disapproved by the court: *State v. Barber*, 32 Pac. Rep. 14, 25, 28. The Missouri court has said of the Montana case that it embodies a misapplication of the English precedents which it cites, and ignores the sections of the statute which authorize the correction of errors and provide for notice in advance of the election as to the names of the candidates: *Bowers v. Smith*, 20 S. W. Rep. 101, 104.

The New York supreme court has held that the failure to file certificates for town officers, as the statute requires, and the neglect to prepare an official ballot, do not invalidate the election, the ballots used containing the names of all the candidates and being treated as official by the electors: *Montgomery v. O'Dell*, 67 Hun, 169, 177; affirmed, without opinion, 142 N. Y. 665.

A certificate which does not state for what purpose the convention making the nomination was called, or for what office the person named in it was nominated, is not entitled to be filed: *State v. Falley*, 83 N. W. Rep. 913 (North Dakota).

Effect of failure to include all nominations. If the officers of a convention inadvertently fail to include in their certificate the name of one of the persons nominated as a candidate for a public office, and the convention authorizes the committee appointed by it to fill any vacancies that might occur in the nominations of the convention, and it is provided by law that in case a nominee die before election day, or decline the nomination, or should any certificate of nomination be insufficient or inoperative, the vacancy thus occurring may be filled, etc., the committee may make a nomination to fill the vacancy caused by the mistake in the certificate: *State v. Clark*, 77 N. W. Rep. 87 (Nebraska case).

Presiding officer of convention. The presiding officer of a county convention directed that the temporary chairman thereof should be chosen by ballot. During such officer's temporary absence from the platform a delegate addressed the convention and requested all in favor of a certain candidate for the temporary chairmanship to rise, which a majority of the members of the convention did. Held, that the person thus voted for was the chairman of the convention, though the minority of the convention in the same hall chose a temporary chairman by ballot and proceeded to do business independently of the majority: *State v. Smart*, 62 Pac. Rep. 541 (Montana).

A group of persons located themselves near the stage where the temporary chairman of a convention stood, and chose a presiding officer by the acclaim of partisans who followed a delegate on whose motion a chairman of the convention was declared elected. During this proceeding the proper temporary officer was attempting to have the proceedings conducted with order. Held, that it was not certain whether the person so declared chosen chairman was in fact chosen,

and that his certificate as to the candidates nominated was null and void: Nomination of DeWitt, 9 Pa. Dist. Rep. 648.

The person chosen chairman of a convention should be chosen in accordance with the rules; if he is not he cannot certify nominations: Reitzel's Nomination, 9 Pa. Dist. Rep. 645.

Lack of acknowledgement. In Kentucky it has been held that the county clerk is not justified in refusing to place the names of nominees on the ballot because the certificate of nomination is not acknowledged before an officer authorized to administer oaths, as required by statute, there being no contest or dispute about the fact of the nominations, and the clerk knowing that the persons who signed the certificate were in fact the persons who occupied the positions thereon indicated: Hallon v. Center, 43 S. W. Rep. 174.

The election of an officer is not invalid because the certificate of his nomination was not acknowledged as the statute required, the same being received and acted on without objection. Jones v. State, 153 Ind. 440.

Certificate as evidence. In analogy to the rule that a certificate of election is *prima facie* evidence of the election of the person to whom it is issued (State v. Kenney, 9 Mont. 223), a certificate of nomination, regular upon its face and filed with the proper officer, is *prima facie* evidence of the nomination of the person so certified: State v. Benton, 34 Pac. Rep. 301.

61. Filing nomination papers and certificates. [Sec. 32, Statutes of 1898.] Certificates of nomination shall be filed as follows: If for officers to be voted for throughout the state or any division or district embracing more than one county, with the secretary of state, not more than forty nor less than twenty days before the day fixed by law for the election for which the nominations are made. If for county officers or other than city officers and those mentioned in the preceding class, with the county clerk, not more than thirty nor less than fifteen days before such election. If for city officers, including ward officers, with the city clerk, not more than fifteen nor less than seven days before the election. Nomination papers may be filed with the secretary of state for such officers as certificates of nomination may be filed with, not more than forty nor less than fifteen days before such election. If for county officers or other than city officers and those last mentioned, with the county clerk, not more than thirty nor less than ten days before the election. If for city officers, including ward officers, with the city clerk, not more than fifteen nor less than four days before the election. Certificates and nomination papers shall be preserved by the officers with

whom they are required to be filed, and shall be open for public inspection.

Shall be filed. Filing a chattel mortgage does not include indorsing and indexing it; the statute is satisfied when the instrument is delivered to, received and kept by the proper officer. His neglect to perform his duty cannot prejudice the rights of the mortgagee: *Smith v. Waggoner*, 50 Wis. 155. The same principle has been applied to nomination papers: *Rathburn v. Hamilton*, 37 Pac. Rep. 20.

Computation of time. The time within which an act is to be done as provided in any statute, when expressed in days, shall be computed by excluding the first day and including the last, except that if the last day be Sunday it shall be excluded. . . . Subd. 21, sec. 4971, Statutes of 1898. If the last day for filing falls on Sunday or a legal holiday the filing must be done on the day before: *Griffin v. Dingley*, 46 Pac. 457. See note to paragraph 63.

Not less than twenty days. A certificate not filed within the prescribed time is of no effect (*Price v. Lush*, 10 Mont. 61; *Matter of Cuddeback*, 3 Hun's App. 103), notwithstanding the officer received it because it was attached to other papers which were filed in time; *Ewing's and White's Certificates*, 13 Pa. Co. Ct. 638; *Hollon v. Center*, 43 S. W. Rep. 174.

Lost certificate. If a certificate is mislaid and lost, proof of the fact that it was made and filed may be supplied or proof of the contents of it made as in case of other lost papers. "If, however, the certificate was insufficient or for any cause became inoperative by reason of being mislaid or lost the statute provides a method for making a nomination and certificate that will be deemed sufficient:" *Rathburn v. Hamilton*, 37 Pac. Rep. 20, referring to a section quite similar to paragraph 63.

Power of the secretary of state. In Missouri a certificate of nomination must be acknowledged by the officers of the convention in the same manner as a deed. In a proceeding against the secretary of state to show cause why he did not file an unacknowledged certificate, it was contended that his duties are purely ministerial. This the court granted, but it said: "Though the secretary of state is a ministerial officer, yet he does not for that reason occupy the attitude of a mere figurehead or automaton, moved about at the whim or touch of every eager applicant who desires the performance of duties which pertain to his office. When applied to for the discharge of such duties, although his discretion may not reach the height known as judicial, and therefore uncontrollable by writ of *mandamus*, yet it cannot be doubted that some portion of the qualities and attributes of discretion necessarily inhere in the discharge of his official duties, requiring him to consider before acting and to search and inquire before reaching or announcing a conclusion. Any other theory would be wholly inconsistent with the proper and orderly discharge of his duties." *State v. Lesueur*, 15 S. W. Rep. 539.

Withdrawal of nomination papers. If a nomination paper is delivered in apt time and in proper form, its withdrawal for the purpose of correcting a supposed insufficiency in the name of a candidate does not affect its validity though it is not redelivered to the officer until after the expiration of the time fixed for filing it. But the court were of opinion that if the paper had been taken back for the purpose of

withdrawing it, the second delivery, being subsequent to the day fixed by law, would be the true delivery, and would have been bad; so if the paper was bad when it was originally delivered, the true delivery would have been the day of its filing as corrected: *Howes v. Turner*, 1 Com. P. Div. 670.

Premature filing. The name of a candidate should be printed on the ballot though the certificate of nomination was filed earlier than the time fixed by statute: *Hollon v. Center*, 43 S. W. Rep. 174 (Ky.).

May be filed any time during last day therefor. Under a law requiring a certificate to be filed with the county clerk at least twenty-five days before the election, such clerk is not justified in refusing to receive a certificate tendered to him between ten and eleven o'clock P. M. on the last day for filing it, notwithstanding he was not then in his office, and it was provided by statute that he should keep his office open for the transaction of public business from nine o'clock A. M. to five o'clock P. M., except upon Sundays and legal holidays: *Matter of Norton*, 34 Hun's App. 79 (N. Y. Supreme Court, 1898).

Vacancy, how filled when certificate not filed in time. When the county auditor determines that a certificate of nomination filed under the code, § 1104, is not in time the vacancies may be filled under section 1102 of the code. *Reese v. Hogan* (Iowa), 91 N. W., 907.

62. Nominations to be certified to county clerk. [Sec. 33, Statutes of 1898.] Not less than fourteen nor more than twenty days before an election to fill any public office the secretary of state shall certify to the county clerk of each county within which any of the electors may vote for candidates for such offices the name and description of each person nominated for such office, as specified in the certificate of nomination or nomination papers filed in his office; and in case of new nomination papers filed as hereinafter provided, after he has certified the original nominations, he shall forthwith upon such filing further certify to such clerks the name and description of such new nominee as in case of a new nomination.

Duty to certify. Under a statute which provides a board to pass upon objections raised to the regularity of certificates, etc., and for giving notice to opposing candidates of the hearing upon such objections, it is held that where objection is not made until it is too late to give such notice and comply with the law requiring the nominations to be certified, the latter act must be performed within the time fixed. The court was unable to see that very serious harm can come from the printing of the name of the candidate on the official ballot even though the certificate of his nomination be informal: *Simpson v. Osborn*, 34 Pac. Rep. 747.

Who may bring mandamus. The petitioners who nominate a candidate may maintain an action to require the secretary of state to certify the fact of his nomination to the proper local officers: *Simpson v. Osborn*, 34 Pac. Rep. 747.

Error or fraud in certifying names. Illegal action in certifying names, which results in their being printed on the ballots, in no way affects other candidates whose names are properly printed thereon—much less does it affect other ballots legally and properly certified and printed; nor does it deprive voters of their franchise or destroy the efficacy of their ballots for legally nominated and certified candidates: *Smith v. Harris*, 32 Pac. Rep. 616.

63. Nominations, how declined; filling vacancy—Votes for deceased nominee. [Sec. 34, Statutes of 1898.] Any person nominated to office may decline and annul the same by delivering to the officer with whom his certificate of nomination or nomination paper is filed, three days before election in case of city officers, and nine days in other cases, a declination in writing signed by him and acknowledged before some officer authorized to take acknowledgements.¹ Upon such declination or the death of a nominee the vacancy or any vacancy caused by the insufficiency of certificates of nomination or nomination papers may be filled in the same manner as original nominations, or by the committee representing the party, the chairman and secretary of which in such case shall make and deliver to the proper officer for filing a certificate, duly signed, certified and sworn to, as required in case of original certificates, setting forth the cause of the vacancy, name of new nominee, office for which nominated, and such other information as is required in case of original certificates.² This certificate must be filed eight days before election, except in case of city offices, in which the time shall be two days; and when so filed shall have the effect of an original certificate. If such declination, death or the permanent removal of a nom-

¹FORM OF DECLINATION OF NOMINATION.

I, _____, of the _____ of _____ in the county of _____ and state of Wisconsin, having been duly nominated by the _____ party to the office of _____ of said _____ to be voted for at the election to be held in said _____ on the _____ day of _____, A. D. 190____, do hereby decline such nomination.
In witness whereof I have hereunto set my hand this _____ day of _____, A. D. 190____.

STATE OF WISCONSIN, } ss.
County of _____,

Personally came before me this _____ day of _____, 190____, the above named _____, to me known to be the person who executed the foregoing declination of nomination, and acknowledged the same.

_____,
Notary Public, _____ County, Wis.

(Or any officer authorized to take acknowledgements.)

²CERTIFICATE OF NOMINATION TO FILL VACANCY.

We, _____, and _____, respectively, chairman and secretary of the _____ committee of the _____ party in the state of Wisconsin, do hereby certify

inee take place after the ballots are printed and before election, the proper chairman of the committee of the political organization of which such candidate was the nominee may make a nomination to fill the vacancy and provide the election boards with pasters containing the name of such nominee only, which shall be pasted upon each of the official ballots by the ballot clerks, before signing their initials thereon and delivering them to voters. If the nominee die after the ballots are printed, and no nomination shall be made as herein provided, the votes cast for him shall be counted and returned, and if he shall receive a plurality the vacancy shall be filled as in case of vacancies occurring by death after election.

Statute must be complied with. The Montana statute is much like this section. It has been held that a certificate purporting to fill a vacancy in a nomination must be filed within the prescribed time, state the cause of the vacancy, the authority to fill it, give the full name of the nominee and of the person whose place he was to fill. If this is not done the name of such person cannot be printed on the official ballots, and if it is so printed his election will be thereby avoided: *Price v. Lush*, 24 Pac. Rep. 749.

Cause of vacancy. A certificate which is silent as to the cause of the vacancy, the authority of the persons who sign it to fill the va-

that by reason of — a vacancy has been caused and now exists in the nomination to — office heretofore made by the — party, to-wit: the office of —. Therefore, by virtue of the powers delegated to it, the committee representing said party in said — does hereby make the following nomination to said office to fill such vacancy:

Name of Candidate. (Give christian name in full. Middle name, if any, may be by initial letter.)	Office for which nominated.	Business or vocation.	Residence. (Give street and number if any.)	Party or political principle represented expressed in not more than five words.
.....				
.....				

Dated —,

—, Chairman.
Business, —.
Residence, —.
Street and number —.
—, Secretary.
Business, —.
Residence, —.
Street and number —.

STATE OF WISCONSIN, } ss.
County of —,

The undersigned, —, —, chairman, and —, secretary of —, referred to in the foregoing certificate, being severally duly sworn, on oath, say that they are respectively the chairman and secretary aforesaid, and that the foregoing certificate and the statements therein contained were by them signed, and are true to the best of their knowledge and belief.

Subscribed and sworn to before me this — day of —, A. D. 190—.

Notary Public, — County, Wis.

NOTE.—This affidavit may be sworn to before any officer authorized to administer oaths.

cancy, and which does not give the name of the person whose place is to be filled, is not entitled to be filed: *Lucas v. Ringsrud*, 53 N. W. Rep. 426.

Filling vacancies. Under a statute which provides, what is probably to be implied from this and the preceding section, that the certificate for filling vacancies shall state for whom the person nominated is to be substituted, and that the secretary of state shall certify to the county officer the name of the person for whom such nominee is to be substituted, it has been held that if no certificate of original nomination has been filed there can be no substitution of names, for the reason that the secretary has nothing in his office showing who had originally been nominated, and whose place the substitute is to fill: *Lucas v. Ringsrud*, 53 N. W. Rep. 426.

Delegation of power by convention. See note to paragraph 59.

Informality in proceedings of committee authorized to fill vacancy not material: *State v. Benton*, 34 Pac. Rep. 301.

Proceedings of committee. A committee named by a convention and authorized to fill vacancies on the ticket has no authority to do so at a meeting attended by a minority of its members, and of which the members were not all notified: *State v. Smith*, 77 N. W. Rep. 384 (Neb.). When a committee has exercised its power and made a nomination which has been accepted, it cannot substitute another for the person so nominated, he not having declined: *Le Bett v. Shirley*, 24 Colo. 269.

Rights of withdrawing delegates. A delegation to a convention whose seats are contested must attempt to participate in the proceedings to such an extent as to show that they are acting in good faith, otherwise a rival convention organized by them after their withdrawal will not be recognized by the courts or election officers: *McKnight v. Whipple*, 55 Pac. Rep. 182 (Colorado).

Insufficiency of certificates. The Illinois statute provides, in effect, that if a candidate duly nominated die before election day, or decline the nomination, or should any certificate of nomination be held insufficient or inoperative by the officer with whom they may be filed, the vacancy thus occasioned may be filled by the political party making the original nominations, or, if the time is insufficient therefor, then the vacancy may be filled, if the nomination was by convention or caucus, in such manner as the convention or caucus had previously provided, or, in case of no such previous provision, then by a regularly elected general or executive committee representing the political party or persons holding such convention, meeting or caucus. *Held*, that the refusal of the county clerk to place upon the official ballot the names of candidates nominated by a county convention because the certificate was not filed in time was, in effect, a ruling that the certificate was inoperative, and that the county committee might fill the vacancies thus resulting by re-nominating the original candidates, though no provision for filling vacancies was made by the convention, there not being time sufficient to call another convention: *People v. Hartley*, 170 Ill. 370, 48 N. E. Rep. 950.

Where a convention of the "People's Party" had duly nominated a candidate and the officers certified the nomination as having been made by the "Populist Party," it was held that such error was within

a statute similar to the last preceding paragraph, and that the executive committee of the party, being authorized to do so by the convention, could fill the vacancy by making a nomination: *State v. Hogan*, 62 Pac. Rep. 683 (Montana).

64. Right of candidates to party name. [Sec. 35, Statutes of 1898.] In case of a division in any political party, and a claim by two or more factions thereof to the same party name, the officer with whom the certificates of nomination are required to be filed shall, in certifying such nominations or preparing ballots, give preference of name to the convention or caucus thereof held pursuant to the call of the regularly constituted party authorities, and if the committee representing the other faction present no other party name, such officer may designate the same in such manner as will best distinguish the nominations thereof. When two or more conventions or caucuses shall be held and the nominations thereof certified, each claiming to be the regular convention or caucus of the same political party, preference in designation shall be given to the nominations of the one certified by the committee which had been officially certified to be authorized to represent the party; when no party convention or caucus is held by the party entitled to nominate as a party, the names of the nominees for any office, who shall be designated in nomination papers as members of and candidates of such party, shall be certified and printed on the official ballots with the party principle they represent. In case two or more nomination papers are filed for the same office, each having the same party designation, they shall be certified and printed on such ballots with the party principle they represent.

Authority of political committee. In a case where a state committee interposed to determine the rights of persons who claimed to be party candidates, its authority was recognized by the court. "The same consideration which should induce courts of justice to maintain the purity of the ballot-box, when the final vote is taken, should equally operate with them to promote honesty and prevent and condemn fraud when a preliminary vote is taken or a nominating convention held. There can be no difference in principle in its application to the various situations mentioned. And though it is said that the decalogue has no place in politics, yet when the tribunals of the country are appealed to in matters having political complexion and bearing, when once they acquire jurisdiction in a proper way of such matters they will administer justice, promote honest dealing and condemn fraud, precisely as they do when administering the law in cases sounding in damages or sounding in contract." It was held that a submission of the claims of rival nominees to the state committee for adjustment was binding on them by way of estoppel: *State v. Lesueur*, 15 S. W. Rep. 539.

In Nebraska the rule is that where the factions of a political party duly certify the names of their respective candidates, the secretary of state will not inquire into the regularity of either convention, but will certify the names of the candidates nominated by each. The question as to which faction is the true representative of a party is a political rather than a judicial one: *Phelps v. Piper*, 67 N. W. Rep. 755. See *Stephenson v. Boards of Election Commissioners*, 76 N. W. Rep. 914.

Right to use party names where there is a fusion of parties in a state convention, see *Baker v. Board*, 68 N. W. Rep. 752.

Regularity of convention. The ticket nominated by the convention held pursuant to a call by the majority of the party's state committee, changing the date for the convention named in the original call, is the regular ticket rather than that nominated by a convention held at the time originally fixed and organized by a majority of such committee which did not assist to the change of date: *William v. Lewis*, 54 Pac. Rep. 619.

In a contest between tickets nominated by rival county conventions as to which ticket or convention is entitled to the party name, both conventions claiming to represent the same political party, the court will not inquire into the matter further than to determine which of such conventions was controlled by the party organization, and such convention is entitled to the sole use of the party name, and to have its ticket placed upon the official ballot: *Addla v. Davenport*, 62 Pac. Rep. 681 (Idaho).

A county convention of a party called by the county central committee to select delegates to a state convention, and for no other purpose, cannot depose the chairman of such committee and supersede him by a chairman of its own selection, where the custom of such party was to select such chairman at a convention called to nominate candidates for county officers. Hence a convention called by such central committee through its duly-elected chairman, though he had been deposed at such convention was the authorized convention of such party: *State v. Smart*, 62 Pac. Rep. 591 (Montana).

Unauthorized names on ballot. The county clerk may be restrained at the suit of the state from putting unauthorized names on the official ballot: *State v. Moran*, 63 Pac. Rep. 390 (Montana).

The common law disqualification applied to judges has no application to members of a quasi-judicial tribunal acting judicially in dealing with administrative matters.

The basic principle of the doctrine, that courts, in solving the rights of political party disputes, as regards the execution of the election laws, should be guided by the decision of the highest authority within the party, is the law as to judicial treatment of the decisions of tribunals of voluntary organizations, generally.

The legislature intended to provide for settlement out of court, of all questions between factions thereof to the same party name, upon the official ballot, by Sec. 35, R. S. Wis., 1898, in these words:

(a) "In case of a division in any political party, and a claim by two or more factions thereof to the same party name, the officer with whom the certificates of nomination are required to be filed shall, in certifying such nominations or preparing ballots, give preference of name to the convention or caucus thereof held pursuant to the call of the regularly constituted party authorities, and if the committee rep-

resenting the other faction present no other party name, such officer may designate the same in such manner as will best distinguish the nominations thereof."

(b) "When two or more conventions or caucuses shall be held and the nominations thereof certified, each claiming to be the regular convention or caucus of the same political party, preference in designation shall be given to the nominations of the one certified by the committee which had been officially certified to be authorized to represent the party; when no party convention or caucus is held by the party entitled to nominate as a party, the names of the nominees for any office, who shall be designated in nomination papers as members of and candidates of such party, shall be certified and printed on the official ballots with the party principle they represent. In case two or more nomination papers are filed for the same office, each having the same party designation, they shall be certified and printed on such ballots with the party principle they represent."

The first clause provides for a case where only one of two or more conventions is claimed to have been held upon the call of the regular party committee, and the identity of that one is, therefore, not in doubt. The second clause provides for a case where all the conventions are claimed to have been held pursuant to the call of such and the same committee by creating a tribunal to decide, for the guidance of the secretary of state, which set of nominees is regular, and is therefore entitled to the use of the party name, such tribunal possessing by familiar rules exclusive and final jurisdiction, save as herein-after stated.

The dominant feature of such first clause is the existence of multifarious "claims to the same party name," one of such claims only, being based on the "call of the regularly constituted party authority," the dominant feature of the second clause is the existence of multifarious "claims to the same party name," based on like claims to regularity of party convention, each of the claimants, referring necessarily to the "call of the regularly constituted party authorities."

The creation of a tribunal to determine such controversies, no provision being made for a judicial review of its decisions, necessarily makes its jurisdiction exclusive and its decisions unimpeachable except for jurisdictional defects. *State ex rel Cook v. Houser*, 122 Wis. 534.

65. County and municipal clerks; notice of nominations.

[Sec. 36, Statutes of 1898, as amended by sec. 1, ch. 457, laws of 1901.] At least seven days before an election to fill any public office the county clerk of each county shall cause to be published in at least two and in not more than four newspapers, published within the county, the nominations to office certified to or filed with him. One of such publications shall be made in a newspaper which advocates the principles of the political party that at the last preceding election cast the largest number of votes, and at least one of the other publications shall be made in a newspaper which advocates the principles of the political party that then cast the next largest number of votes. The county clerk shall make such publications in two daily newspapers in counties having such, one of

which publications shall be on the last Monday preceding election day and the other one week previously; but if there be no daily newspaper published within the county, one publication in each weekly newspaper selected shall be sufficient. In case of a municipal election such publication shall be made by the city clerk two times in not more than two newspapers published in such city, but in case no daily newspaper be published in such municipality, there shall be one publication made in the weekly papers selected. One of such publications in each newspaper shall be upon the last day upon which it is issued before election. In addition to the publication required to be made by this section, so much of the following section as relates to information to voters may be published in the papers hereinbefore mentioned, and in such papers as are printed in foreign languages, fairly translated into such language, with illustrative examples as to the proper manner of marking a ballot, as in the judgment of the clerk may be proper and necessary.

Not applicable to excise election. This and the next following section have no relation to elections held to determine the amount to be paid for liquor license: *State v. Janesville*, 90 Wis. 157.

Compensation for publishing notice. If a daily paper fails to publish daily the notice required by this section, it cannot recover compensation for making less frequent publications of it: *Endion Imp. Co. v. Evening Telegram Co.*, 104 Wis. 432, 80 N. W. Rep. 732.

Cast the largest number of votes. In determining which party cast the largest number of votes the vote cast within the limits of the county in which the publication is to be made, whether they were cast for a state of county office: *Commonwealth v. Sellers*, 7 Pa. Dist. Rep. 665.

66. Information to voters; fee for publishing. [Sec. 37, Statutes of 1898, as amended by sec. 2, ch. 457, laws of 1901.] In making publication¹ of an election notice, the county or city clerk, as the case may be, shall precede the same with a statement which shall be substantially in the following form, to be modified or varied according to the nature of the election, the caption to which shall be conspicuously displayed, but in no case, shall the space occupied by said caption be more than one and one-fourth inches in depth.

¹ See paragraph 85 as to qualification of newspaper.

ELECTION NOTICE.

Office of Clerk.
, 19...

To the electors of county or city:

Notice is hereby given that a general election or judicial or city, or school or special, or judicial and city election, as the case may be, is to be held in the several towns, wards and election precincts in the county or city of, on the day of, 19.., at which the officers named below are to be chosen. The name of the candidate for each office to be voted for, whose nominations have been certified to this office, are given opposite the title of the office and under the appropriate party or other designation, each in its proper column, and the questions submitted to a vote are stated below.

Information to Voters.

The following instructions are given for the information and guidance of voters: A voter upon entering the polling place and giving his name and residence, will receive a ballot from the ballot clerk which must have endorsed thereon the names or initials of both ballot clerks, and no other ballot can be used. Upon receiving his ballot, the voter must retire alone to a booth or compartment and prepare the same for voting. A ballot clerk may inform the voter as to the proper manner of marking a ballot, but he must not advise or indicate in any manner whom to vote for. If it be a general election these words are to follow: the voter if he wishes to vote for all the candidates nominated by any party should make a cross mark X under the party designation printed at the top of the ballot in the circle made for that purpose. A ballot so marked, and having no other mark, will be counted for all the candidates of that party in the column underneath, unless the names of some of the candidates of the party have been erased or a cross mark be placed in the square under the name or at any place in the space occupied by the name or names of candidates in another column, and will be counted for any name written in lieu of one erased. If the voter wishes to vote for some of the candidates of different political parties, he should make a cross mark under the name of each candi-

date he desires to vote for, or at any place within the space in which the name is printed. If he wishes to vote for a person for a certain office whose name is not on the ballot, he must write the name in the blank space under the printed name of the candidate for the office. The ballot should not be marked in any other manner. If the ballot be spoiled it must be returned to the ballot clerk, who must issue another in its stead, but not more than three in all to any one voter. Five minutes' time is allowed in booth to mark ballot. Unofficial ballots or memorandum to assist the voter in marking his ballot can be taken into the booth, and may be used to copy from. The ballot must not be shown so that any person can see how it has been marked by the voter. After it is marked it should be folded so that the inside cannot be seen, but so that the printed indorsements and signatures of the ballot clerks on the outside may be seen. Then the voter should pass out of the booth or compartment, give his name to the inspector in charge of the ballot box, hand him his ballot to be placed in the box, and pass out of the voting place. A voter who declares to the presiding officer that he is unable to read, or that by reason of physical disability he is unable to mark his ballot, can have assistance of one or two election officers in marking the same, to be chosen by the voter; and if he declares that he is totally blind, he may be assisted by any person chosen by him from among the legal voters of the county. The presiding officer may administer an oath in his discretion, as to such person's disability. The party designations and candidates for the different offices are, for example, as follows: insert list of party designations and candidates.

Office.	Democrat- ic ticket.	People's ticket.	Prohibi- tion ticket.	Republi- can ticket.	Ind. nominat- ions.
Governor	A. B.	B. C.	C. D.	D. E.	E. F.
Lieutenant Governor	F. G.	G. H.	H. I.	I. J.	J. K.

....., County Clerk.

The body of said notice shall be set in the type of the regular reading matter of the paper making the publication which shall not be larger than long primer nor smaller than minion and shall contain at least seven lines of type to the inch. The titles of offices and names of candidates shall be separated in

the notice by blank spaces not exceeding one-twelfth of an inch in thickness and the columns containing the titles of offices and the names of candidates shall not exceed two and one-sixth inches in width. No other or further publication of notice provided for by this and the preceding section shall be required to be made by any county or city clerk, except that in cities, the clerk shall at the foot of such notice, specify the place of voting in each election precinct, and the hours of opening and closing the polls. The compensation to be paid for all publications of such notice shall be one dollar per square for weekly papers and two dollars per square for daily papers, but the total shall in no case exceed the amounts hereinafter specified, to-wit: for a general election in weekly newspapers one hundred and twenty dollars, and in daily newspapers two hundred and forty dollars; for a judicial election, in weekly newspapers twenty-five dollars and in daily newspapers fifty dollars; for a municipal election, in weekly newspapers thirty-five dollars, and in daily newspapers seventy dollars, which shall cover all insertions required to be made; provided, that in cities of the first class said notice shall be published daily and the compensation for publication of said notice shall be at the rate of one dollar per square for the first insertion, and seventy-five cents per square for each subsequent insertion. The word square as used in this section shall be construed to mean a space one inch in length of the column of the newspaper in which any such notice is published; but any fraction of a square shall be paid for as a full square.

Failure to publish. See note to paragraph 84. In answer to the contention that an election was void because the ballot was not published the court said. "It cannot be seriously contended that the failure of the county clerk to publish the ticket as required *per se*, absolutely vitiates the election. Besides, the courts cannot take judicial notice of the number of newspapers or of the fact that a newspaper is published in a given county." *Atkeson v. Lay*, 22 S. W. Rep. 481, 485. *Allen v. Glynn*, 29 Pac. Rep. 670, is to the same effect.

Publication of erroneous instructions to voters. Where the posted notices of instructions to voters were in conformity with a repealed law, but not in exact conformity with the law in force, the court held that the election was not void. "The electors are not to be deprived of the result of their votes at an election by the mistake of election officers when it does not appear to have changed the result." *People v. Avery*, 102 Mich. 572.

Form of notice. See paragraph 162.

PART VI.

OF THE REGISTRY OF ELECTORS.

NOTE. The first meeting of the board of registry provided for by sec. 25, statutes of 1898, as amended by ch. 381, laws of 1903,¹ is superseded by the registration for the primary election, provided for by sec. 14, ch. 451, laws of 1903,² excepting so far as it relates to elections in villages and towns, when registration is required, other than the general election.

When and where required, 67.

In cities, villages and towns in certain cases, 67a.

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Board of registry, first meeting; powers, vacancies, 70.

Inspectors' oaths—Registry, how made; filing and printing of, 71.

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Second meeting, revision of list—Minors may be registered—Application by non-registered elector, 73.

Registry list for local, judicial and special elections, 74.

OF THE REGISTRY OF ELECTORS.

67. When and where required. [Sec. 23, Statutes of 1898, as amended by chapter 420, laws of 1903.] In each year when a general election is by law required to be held, a registry of electors shall be made in each ward or election district of every city³ and in each ward or election district of every incorporated village, which city or village at the last previous census had a population of two thousand or more, and in every town having a population of three thousand or more according to such census. And until a census shall be so taken, and the population of such city or village determined as herein mentioned, no registry shall be held or taken therein or in such towns as aforesaid. Such registration shall be made in the manner provided by this chapter. No vote shall be received at any general election in any ward or election district within this section if the name of the per-

¹ Paragraph 70.

² Paragraph 26.

³ See paragraph 69.

son offering to vote be not on said registry as completed, except as hereinafter provided; but in case anyone shall after the last day for completing such registry and before such election, become a qualified voter of the election district, he shall, upon complying with the provisions of this chapter, have the same right to vote as if his name had been registered.

Provided, however, that in cities and villages having a population of more than two thousand and less than three thousand at the last previous census, the common council of such cities and the board of trustees of such villages, may by ordinance or resolution otherwise declare and provide as to such registration.

Regulation of right to vote. It is competent for the legislature to require that a voter shall make reasonable proof of his right to vote: *State v. Baker*, 38 Wis. 71. The provisions of the registry law forbidding the reception of votes of those not registered, or who do not furnish certain proofs, are imperative, and votes received in violation of such provisions may be rejected: *State v. Hilmantel*, 21 Wis. 566. When there is no registry and no proof made as required in the case of an unregistered elector, the vote must be rejected: *State v. Stumpf*, 23 Wis. 630. Right to vote not impaired by illegal registry: *State v. Baker*, 38 Wis. 71. Error of inspectors in making register or failure to comply with the law, of which voters have no notice, is immaterial, and the right to vote is not lost thereby: *Ibid*.

67a. In cities, villages and towns in certain cases. [Sec. 23a, Statutes of 1898, enacted by chapter 454, laws of 1905.]

1. The provisions of section 23¹ of the statutes of 1898, shall apply to all general and municipal elections and annual town meetings in all cities, villages and towns not therein provided for, the electors of which shall vote to adopt the same in the manner hereinafter provided.

2. Such vote shall be taken at any general or municipal election or annual town meeting whenever a number of the qualified electors of any such city, village or town equal to or more than ten per centum of the number of the votes cast therein for governor at the last general election shall present to the clerk thereof a petition in writing, signed by them, praying that the electors thereof may have submitted the question of whether or not the provisions of said section 23 shall be adopted by said city, village or town respectively. Notice of such election shall be given in cities in the same manner as provided by law for the giving of notice of an annual or municipal election therein and in villages and towns

¹ Paragraph 67.

by posting notices in at least three public places in said village or town not less than ten days before the day of such general or municipal election or annual town meeting. The election on such question shall be held and conducted and the returns canvassed in the same manner as elections in such city, village, and elections and town-meetings in such town are held, conducted and canvassed, respectively.

3. The ballots upon the question so submitted shall be deposited in a separate ballot box and shall contain the words "for registration" ☐ "against registration" ☐ If a majority of all votes cast on that question shall be for registration, then said section 23 shall apply to all annual and municipal elections and annual town meetings thereafter held in said city, village or town, until the electors thereof shall in the same manner determine to the contrary and all the provisions of law relating to the manner of making and conducting registration in cities, villages and towns shall apply to such city, village or town respectively.

68. When required at local and judicial elections. [Sec. 24, Statutes of 1898.] The preceding section shall apply to the annual municipal and judicial elections in all cities, villages and towns specified therein, unless the common council of such city, the board of trustees of such village, or the board of supervisors of such town shall, by ordinance or resolution, otherwise declare and provide; but no such ordinance or resolution shall apply to any such election to be held within thirty days after the adoption of the same by such common council, trustees or supervisors.

69. When required in first class cities. [Sec. 2, ch. 393, laws of 1901, as amended by ch. 320, laws of 1903.] In all cities of the first class such inspectors shall make a new registry of electors for each municipal and general election, and no previous registry, or registry list, shall be copied or used in whole or in part in making the same, and no person's name shall be placed upon such registry unless the elector appear in person before the inspectors and request that his name be registered. Such inspectors shall hold their first meeting on Monday and the following Tuesday, four weeks preceding such election. They shall meet at six o'clock in the forenoon and hold their meetings open until eight o'clock in the even-

ing of each day during which they shall so sit. They shall hold their second meeting on the Monday preceding the Tuesday next preceding the election.

70. Board of registry, first meeting;¹ powers, vacancies. [Sec. 25, Statutes of 1898, as amended by ch. 381, laws of 1903.] The persons authorized by law to act as inspectors of election in each of such villages, towns, wards or election districts shall constitute the board of registry therefor. They shall hold their first meeting on Tuesday, four weeks preceding the general election, and may also meet if registration is to be had at municipal or judicial elections in towns having a population of three thousand or more, four weeks preceding such municipal or judicial election, at the place where said election is to be held; and in election districts at which there were polled at the previous general election three hundred votes or less they shall sit for one day, and in districts at which there were more than three hundred votes polled they may sit two days, if necessary for the purpose of making such list. They shall meet at nine o'clock in the forenoon and hold their meeting open until eight o'clock in the evening of each day during which they shall so sit. The persons appointed to act as clerks of election shall act as clerks of such board on the day of election only. Their proceedings shall be open, and all electors of the district shall be entitled to be heard in relation to corrections or additions to said registry. They shall have the same power to preserve order which inspectors of election have on election days; and vacancies in the board shall be filled in the same manner that vacancies are filled at elections.

71. Inspectors' oaths—Registry, how made; filing and printing. [Sec. 26, Statutes of 1898.] Said inspectors, before doing any business, shall severally take and subscribe the oath of inspectors at a general election, and shall, at their first meeting, make a registry of all the electors of their respective districts, placing thereon the full names, alphabetically arranged according to surnames, in one column, and in another the residence by number and name of street or other location if known. If any elector's residence is at any hotel or public boarding-house the name of the same shall be stated in the registry. They shall put thereon the names of all persons

¹See paragraph 26 and also note on page 73.

residing in their election district appearing on the poll lists kept at the last preceding general and municipal elections, and may take therefor such lists from the office where kept, omitting therefrom the names of such as have died or removed from the district, and adding the names of all persons known to them to be electors therein. In case of the formation of a new election district since such election, the said board therein may make such registry from the best means at their command, and may, if necessary, procure therefor certified copies of the last poll lists. They shall complete said registry, as far as practicable, at their first meeting, and make four copies thereof and certify the original and each copy to be a true list of the electors in their district, so far as the same are known to them; and one of said copies shall be immediately posted in a conspicuous place in the room in which their meeting was held, and be accessible to any elector for examination or making copies thereof, and one copy shall be retained by each inspector for revision and correction at the second meeting. They shall within two days after such first meeting file the original registry made by them and said poll lists in the office of the proper town, city or village clerk, and shall cause twenty-five printed copies of said registry to be made and posted in twenty-five public places in said election district, if that can be done at an expense not exceeding one cent for each name on the list.

72. Registry, how made in cities of the first, second and third class. [Sec. 1, ch. 393, laws of 1901.] The inspectors of election in all cities of the first, second and third class shall make a register of all electors of their respective precincts, arranging the names in such manner that all electors residing on the same street are grouped and in numerical order, commencing with the lowest house number from one boundary line of such election precinct to the highest house number on the same street within the boundaries of such precinct. The printed registered list shall have the names of the various streets displayed in heavy type over each group of electors residing on such street within the precinct boundaries, and such streets shall be arranged in successive geographical order from east to west and north to south.

73. Second meeting; revision of list—Minors may be registered—Application by non-registered elector—Posting list.

[Sec. 27, Statutes of 1898.] The inspectors shall hold their second meeting at the place designated for holding elections on the Tuesday next preceding the election. They shall meet at nine o'clock in the forenoon and hold their meetings open until eight o'clock in the evening. They shall revise and correct the registry: First, by erasing the name of any person who shall be proved to their satisfaction, by the oath of two electors of the district, to be not entitled to vote therein at the next ensuing election, unless such person shall appear, and, if challenged, shall answer the questions and take the oath hereinafter provided; second, by entering thereon the name of every elector entitled to vote in the district at the next election who shall appear and require it, and state his place of residence, giving street and number, if numbered, or location, as hereinbefore provided, and, if challenged, answer the questions and take the oath provided in case of a challenge at an election; but, if any such person shall refuse to answer all such questions or to take such oath, his name shall not be registered. Any person who is not twenty-one years of age before the date when the registry is required to be corrected, but will be if he lives until the day of election, shall have his name put on such registry if he be otherwise qualified to be an elector. Any elector who did not vote at the previous general election shall be entitled to be registered, either at the preliminary or final registration of electors, by appearing before the board of his election district and establishing his right to be registered, or instead of a personal appearance, he may make application to be registered in writing.¹ Such application shall state the name and period of continuous residence in the election district and place of residence therein, giving the number and street of the applicant, and in case he is of foreign birth² he shall state when he came to the United States

¹FORM OF APPLICATION FOR REGISTRATION.

STATE OF WISCONSIN, { ss.
 County.

A— B—, being duly sworn, says that his name is A— B—; that he is — years of age; that he has continuously resided in the — at — for —, and that he is entitled to vote at the next ensuing general election, and hereby makes application to be registered as a voter in said district.

Subscribed and sworn to before me this — day of October, 190—. A— B—. C— D—, *Justice of the Peace, (or Notary Public, etc.).*

²FORM OF APPLICATION FOR REGISTRATION, WHEN APPLICANT IS FOREIGN BORN.

STATE OF WISCONSIN, { ss.
 County.

A— B—, being duly sworn, says that his name is A— B—; that he is — years of age; that he has continuously resided in the — of — at

and to this state, and the time and place of declaring his intention to become a citizen of the United States, and that he is entitled to vote at the election. Upon receiving such application the board shall register the name of such applicant if it appears that the applicant is by his statement entitled to vote. Such statement shall be preserved by the board, and be filed in the office of the proper town, village or city clerk. Every person named in this section shall be subject to the same punishment for any false statement or other offense in respect thereto as is provided in case of such false statement or other offense by an elector offering to vote at an election. After such registry shall have been fully completed on the day above mentioned, no names shall be added thereto except as hereinafter provided. Within three days after the second meeting the said board shall cause at least six copies of the registry to be made or printed, each of which shall be certified by them to be a correct registry of the electors of their district, one of which shall be kept by each inspector for use on election day, and two shall be forthwith filed in the office of the proper town, city or village clerk. All registries shall at all times be open to the public inspection at the offices where deposited without charge. Within three days after completing the registry the inspectors shall give notice by posting copies in five or more public places in each ward or election district in such city, village or town. No votes shall be received at any general election if the name of the person offering to vote be not on the registry as completed except as is provided in section 61.

74. Registry list for local, judicial and special elections. [Sec. 28, Statutes of 1898.] At city, village, town or judicial elections, when registration shall be required as provided in section 23, or at any special election held for the purpose of filling a vacancy in an office which by law is to be filled by a general election, the registration list used at the last preceding general election may be used; and the inspectors of election at each polling place named, on the day of election, shall revise

— for —; that he came to the United States on the — day of —, A. D. 190—; and to the state of Wisconsin on the — day of —, A. D. 190—; and that on —, —, in the county of —, in the state of —, he declared his intention to become a citizen of the United States; and that he is entitled to vote at the next ensuing general election, and hereby makes application to be registered as a voter in said district.

A— B—.

Subscribed and sworn to before me this — day of October, 190—.

C— D—, *Justice of the Peace, (or Notary Public, etc.).*

the same by adding thereto the names of such persons as are known to them, or as shall be satisfactorily shown in the manner provided by law, to be entitled to vote at such election, and by striking therefrom the names of such as are known to them to have died or become disqualified since the last preceding registration.¹

¹In the opinion of the attorney general the registry list used at the last preceding general election may be used at all elections named in this section even though women may vote at such election and even though they did not vote and were not registered at the preceding general election. In such case the names of women may be added to the registry list as provided in this section.

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75. Electors, who are. [Sec. 12, Statutes of 1898.] Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the state for one year next preceding any election, and in the election district where he offers to vote ten days, shall be deemed a qualified elector at such election:

.. 1. Citizens of the United States.

2. Persons of foreign birth who shall have declared their intention to become citizens conformably to the laws of the United States on the subject of naturalization.

3. Persons of Indian blood who have once been declared by law of congress to be citizens of the United States, any subsequent law of congress to the contrary notwithstanding.

4. Civilized persons of Indian descent not members of any tribe.

5. Any civilized person, being a descendant of the Chipewas of Lake Superior or any other Indian tribe, residing within this state, and not upon any Indian reservation, who shall make and subscribe to an oath before the clerk of the

circuit court or his deputy of the county where such person resides that he is not a member of any Indian tribe, and has no claim upon the United States for aid and assistance from any appropriation made by congress for the benefit of Indians, and that he thereby relinquishes all tribal relations, and all right to claim or receive such aid, shall be entitled, on such oath being filed and recorded, to vote at all elections held in this state, if he is otherwise qualified. The oath so taken, on being corroborated as to the residence and tribal relations of such person by the affidavit of a qualified elector, shall be filed in the office of the clerk before whom it was taken and recorded by him in a book to be provided for that purpose, upon such person paying to said clerk the sum of one dollar.

6. Every woman who is a citizen of this state, of the age of twenty-one years or upwards, who has resided within the state one year and in the election district where she offers to vote ten days preceding any election pertaining to school district matters and the election of school district officers, and who is not a pauper or excluded by section 2 of article 3 of the constitution,¹ may vote at any election pertaining to such matters and the election of such officers in any town, city or village in which she has so resided.²

Scope of statute. It was said of ch. 288, laws of 1893, which is the substance of this chapter (paragraphs 75-169, 58-66, 67-74) that it had no application to elections for special purposes, as to fix the amount of the fee payable for liquor licenses; and also that it was the latest revision of the laws relating to general elections, and that it may be assumed to comprise all in force relating to that subject: State v. Janesville, 90 Wis. 157.

Residence in the state. The constitution preserves residence in the state in favor of electors who are absent therefrom on business of the United States or of this state. It also provides that residence cannot be gained by persons in the army or navy because they are stationed within the state. A similar clause does not prevent a person who removes to a county while in the service of the United States from acquiring a residence while in said service, if it is his intention to do

¹The section referred to is paragraph 2 of this compilation.

²Sec. 1, ch. 285, laws of 1901, amended sec. 428a, statutes of 1908, to read as follows: "Every woman who is a citizen of this state, of the age of twenty-one years or upwards (except paupers, persons under guardianship, and persons otherwise excluded by section two of article three of the constitution of Wisconsin), who has resided within the state one year, and in the election district where she offers to vote, ten days next preceding any election pertaining to school matters shall have a right to vote at such election. Separate ballot boxes shall be furnished at every election precinct in this state at every primary, general, municipal or special election for the use of women desiring to vote on said school matters, and separate ballots shall also be provided at said elections for the use of said women."

Chapter 233, laws of 1899, amended sec. 428, statutes of 1899, so as to require thirty days' residence of "every resident elector," to entitle him to vote in any meeting.

so: *People v. Holden*, 28 Cal. 123, 137; *Devlin v. Ancarson*, 38 Id. 92; *Stewart v. Kyser*, 105 Id. 459.

In Illinois "a permanent abode" is an indispensable requisite to the right to vote. Those words mean nothing more than a domicile—a home—which a person is at liberty to leave temporarily as interest or whim may dictate. "It is not required that the elector shall continuously remain at his residence, provided he does not acquire a new residence; and his absence may be long or short, or for definite or indefinite periods, and he does not thereby lose his residence or his right to vote:" *Moffett v. Hill*, 131 Ill. 239; *Carter v. Putnam*, 141 Id. 133.

An elector who has changed his residence to another state furnishes a very strong presumption of an intent to abandon it and resume his former one by returning and voting at several consecutive elections: *Moffet v. Hill*, 131 Ill. 239.

Residence in the election district. Abiding in a place for the purpose of school teaching is not, in general, a sufficient suffrage residence: *Crawford v. Wilson*, 4 Barb (N. Y.) 504. But it has been held that persons who went to a military post for the purpose of working there, without the intention of returning to their former domicile, acquired a residence: *State v. Griffey*, 5 Neb. 161. A residence may be acquired without intending to live in the place where the person is for all time. "If he lives in a place, with the intention of remaining for an indefinite period of time, as a place of fixed present domicile, and not as a place of temporary establishment or for mere transient objects it is to all intents and for all purposes his residence:" *Sturgeon v. Korte*, 34 Ohio St. 525, 535.

The cases bearing upon the right of students at an institution of learning to vote at the place where it is located are not harmonizable. Some of them, and nearly all the older ones, proceed on the theory that the intention of remaining permanently at such place must be entertained. A recent case in Iowa proceeds on this view. It was held in *Vandepool v. O'Hanlon*, 53 Iowa, 246, that a student at the State university was not a resident of Iowa City although he did not know what he would do after he was graduated, and was not aware that he would leave that place. This is the doctrine held in *Pennsylvania: Fry's Election Case*, 71 Pa. St. 302, which goes further than the Iowa case. The result reached in *Fry's case* was that students living in the college town, even though they supported themselves and were emancipated from their father's families, and had no intention of returning to their homes, were not entitled to vote there. It appeared, however, that the students were there for the sole purpose of being educated, and intended to leave on being graduated.

A student who is otherwise qualified and who is emancipated from his father's family, and has abandoned his former domicile, has his residence where he is being educated: *Putnam v. Johnson*, 10 Mass. 488. Presence at the place where an institution of learning is located is not conclusive as to the right to vote there. If a student has a father living and is a member of his family, returns to spend his vacations with his father and is maintained by him, these circumstances are strong to repel the presumption of a change of domicile. On the other hand, if a student is separated from his father's family, and is not maintained by him, on removing to a college town and

taking up his abode there, not intending to return to his former domicile, the circumstances are more or less strong to show his right to vote in such town: *Opinions of the Justices*, 5 Met. (Mass.) 587; *Sanders v. Getchell*, 76 Me. 158.

In a Nebraska case the facts were that the students were in the town where they voted mainly for the purpose of attending the university; they were emancipated from their parents and apparently had no intention to return to them. They were absent from the college town during vacation, going wherever they could find employment, with the intention of returning there at its close; they were uncertain as to their course upon graduation and had no particular future place of residence in view. The court said: "The fact that one is a student in a university does not, of itself, entitle him to vote where the university is situated, nor does it prevent him voting there. He resides where he has his established home, the place where he is habitually present, and to which, when he departs, he intends to return. The fact that he may at a future time intend to remove will not necessarily defeat his residence before he actually does remove. It is not necessary that he should have the intention of always remaining, but there must co-exist the fact and the intention of making it his present abiding place, and there must be no intention of presently removing." *Berry v. Wilcox*, 62 N. W. Rep. 249; *Pedigo v. Grimes*, 13 N. E. Rep. 700.

Persons of foreign birth. Where a certificate of naturalization is granted by a court of competent jurisdiction, evidence is not admissible to show that it was improperly granted, or was obtained by false and perjured testimony: *Behrensmeyer v. Kreitz*, 26 N. E. Rep. 704, 714.

Indians. It has been held in Nebraska that the act of congress of February 8, 1887 (vol. 24, U. S. Stats., p. 388), which provides that all Indians born within the territorial limits of the United States to whom allotments of land in severalty have been made under its provisions or under any other law or treaty, and all Indians, born as aforesaid, who have voluntarily taken up their residence in the United States, separate and apart from any tribe of Indians therein, and adopted the habits of civilized life, shall be citizens of the United States, does not conflict with the federal constitution, and that such Indians are citizens of the state. The actual issuance or receipt by an Indian of a patent for lands allotted to him under that act is not necessary to constitute him a citizen. When he has accepted the land allotted, taken possession thereof, and otherwise complied with the law, he becomes entitled to his patent, and his citizenship attaches: *State v. Norris*, 55 N. W. Rep. 1086.

Women's right to vote. Subd. 6 of the foregoing section (see note thereto) must be taken as amending sec. 1, ch. 211, laws of 1885, which gave women the right to vote at any "election pertaining to school matters." It was ruled that under that act women could not vote for school officers, as for county superintendent, at elections where other officers were voted for on the same ballot: *Gilkey v. McKinley*, 75 Wis. 543. Inasmuch as ch. 211, 1885, was voted upon by the people, and, in the language of Lyon, J., "a like vote would doubtless be required to repeal it," because, though "it is in the form of a statute, yet it is essentially a part of the constitution," it seems reasonably clear that the limitation put upon women's right to vote by the act of

1893 would be ineffectual if the legislature provides means whereby their rights under the act of 1885 can be secured. The defect in that act was that neither it nor any other statute prescribed a procedure by which the ballots of a new class of voters, with a limited right of suffrage, could lawfully be received by the election board: *Gilkey v. McKinley*, 75 Wis. 543. In its present form the statute is in accordance with the construction given it by the supreme court in so far as it can be executed without additional legislation.

Citizenship of married women. A woman who is a citizen and remains a resident of the United States does not become an alien by marrying a foreigner, who, before marriage to her, has settled in the United States and has no intention of returning to his native land, though he has never taken steps looking toward his naturalization: *Comitis v. Parkerson*, 56 Fed. Rep. 556. A woman who marries a citizen of this country in a foreign land is thereby made a citizen, although she remains abroad. *Halsey v. Beef*, 52 Hun (N. Y.) 366; *Burton v. Burton*, 1 Keyes (N. Y.), 359; *Kane v. McCarthy*, 63 N. C. 293.

PLACE AND TIME FOR HOLDING ELECTIONS.

76. Where votes to be cast—Wagers and bribery. [Sec. 13, Statutes of 1898.] No elector shall vote except in the town, ward, village or election district in which he actually resides; provided, that all persons residing upon Indian land¹ within any county of the state, and qualified to exercise the right of suffrage, shall be entitled to vote at the polls which may be held nearest their residence for state, United States or county officers; but no person shall vote for county officers out of the county in which he resides. No person who shall have made or become interested, directly or indirectly, in any bet or wager depending upon the result of any election at which he shall offer to vote shall be permitted to vote at such election; and any person who shall have been convicted of bribery shall be excluded from the right of suffrage unless restored to civil rights.

Residence in election district. See note to paragraph 1. There is no change of residence so long as the voter and his family remain where they were. The removal of property as a step in the transfer of residence from one district to another is not sufficient to work a change of domicile: *Carter v. Putnam*, 141 Ill. 133.

Persons who reside in a state on lands which have been ceded to the United States are residents of the state, if subject to its jurisdiction: *Renner v. Dennett*, 21 Ohio St. 431. But if the cession is of jurisdiction for all purposes, it is otherwise: *Sinks v. Breeze*, 19 Ohio St. 302; *Opinion of Judges*, 1 Mass. 590, 1 Met. 580.

¹ See part XVI.

Same; electors in villages. See paragraph 253. Villages organized under ch. 40, R. S. 1878, were separate and independent municipal corporations, and a resident and elector of such a village could not vote for town officers at a town meeting within the limits of which the territory composing the village was formerly situated: *Jones v. Kolb*, 56 Wis. 263.

It was provided by sec. 1, ch. 341, laws of 1889, that "until proceedings have been taken under this chapter for the purpose of determining whether any village organized under chapter 40 of the Revised Statutes, and a town within which such village may be situated shall be separate and independent municipalities or shall be united for town purposes, it is hereby declared that all villages which have elected an assessor pursuant to chapter 391 of the laws of 1887 shall be separate and independent from the town; and that all villages which have not elected an assessor pursuant to said chapter shall be deemed to be a part of the town for town purposes the same as though said chapter 391 of the laws of 1887 had not been passed." In *State v. Alder*, 87 Wis. 554, the question was as to the effect upon the election of a county officer of electors of a village, in which an assessor had been elected pursuant to the act of 1887, voting at the polling place of the town. It was held that they had no right to vote there; that the votes cast by them were illegal. It was immaterial that the person who was elected village assessor failed to qualify and that at subsequent elections no such officer was chosen, and that by mistake of the officers no village polling place was provided. See paragraph 253.

Construction of election laws. All provisions of law relating to elections are mandatory if enforcement be sought before election; after election they are directory only unless they are of a nature to obstruct free and intelligent voting or the ascertainment of the result of the voting, or unless they affect an essential element of the election, unless it be otherwise expressly declared in the statute: *Jones v. State*, 153 Ind. 441.

77. Time of holding. [Sec. 14, Statutes of 1898.] The general elections prescribed in the constitution shall be held in the several towns, wards, villages and election districts on the Tuesday next succeeding the first Monday in November in the year 1898, and biennially thereafter, at which time shall be chosen such representatives in congress, electors of president and vice-president, state senators, members of assembly, state officers and county officers as are by law to be elected in such year.

78. Where elections held. [Sec. 15, Statutes of 1898.] All elections under this and the next two following chapters,¹ shall be held:

1. In cities, in the wards or election districts, at the place or places to be ordered by the common councils thereof, re-

¹Parts VIII and IX, of this compilation.

spectively, at least four months before such election, unless otherwise provided by law.

2. In villages, at the place in each election district thereof to be ordered by the trustees at least four months before such election, unless otherwise provided by law.

3. In each town, at the place where the last town meeting was held, or at such other place as shall have been ordered by such meeting or by the supervisors, when they establish more than one election district as hereinafter provided; but the first election after the organization of a new town shall be at the place directed in the act, order or proceeding by which it was organized.

What is an election? A town meeting is an election, and so is every lawful assembly of electors to make choice by ballot: *Phillips v. Albany*, 28 Wis. 340.

Place of holding. See note to paragraph 76. It is essential that the election be held at the place designated. It cannot lawfully be held elsewhere unless the necessity for a change is absolute: *Melvin's Case*, 68 Pa. St. 333; *Brightley's Elec. Cas.* 251; *Knowles v. Yeates*, 31 Cal. 82; *Simons v. People*, 18 Ill. App. 538; *Heyfrom v. Mahoney*, 24 Pac. Rep. 93. The place of holding a town election cannot be changed otherwise than as the law provides: *State v. Davidson*, 32 Wis. 114. See *Brodhead v. Milwaukee*, 19 id. 624.

If voters have by general consent selected a place and voted there for years, the fact that it has not been formally designated by the authorities will not invalidate elections: *State v. Calhoun*, 61 Miss. 556.

If the place is to be designated by an officer, or by two officers acting together those authorized must act. Their function cannot be delegated neither can one act independently of the other: *Stephens v. People*, 89 Ill. 337.

If a town has been duly vacated and the electors residing within its former boundaries, without authority of law, open a poll and cast their votes, they cannot be counted at an election for county officers. *State v. Pierce*, 35 Wis. 93.

An election is not invalid because polling places were established on Indian reservations: *State v. Norris*, 55 N. W. Rep. 1086, 1090.

The failure of village officers to provide a separate polling place does not authorize the counting of ballots cast by village electors at the town polling place: *State v. Alder*, 87 Wis. 554.

79. Division of election districts. [Sec. 16, Statutes of 1898, as amended by sec. 1, ch. 333, laws of 1901.] Election districts as established may be divided into two or more districts in towns when the supervisor shall deem it for the con-

venience of the voters,¹ and shall be divided when fifty or more electors thereof shall petition the board in writing therefor;¹ and such division shall be made in wards, villages or towns when it shall appear that six hundred or more votes were cast in any such district therein at any election;² provided, however, that no division shall be made in any town containing less than fifty sections of land unless it shall appear that four hundred or more votes were cast in such town at the last preceding general election. Such division shall be made at least four months prior to the next succeeding general election, and shall be so made that the districts shall be composed of compact, contiguous territory, no one of which shall contain over five hundred voters. The order or resolution making such division shall be filed with the proper city, village or town clerk who shall within five days after such filing, transmit a copy thereof to the county clerk, and in towns and villages the clerks thereof shall post copies of such order or resolution in five public places therein. The order

FORM OF ORDER DIVIDING TOWN INTO TWO OR MORE ELECTION DISTRICTS.

WHEREAS, the undersigned, town board of the town of _____, deem it more convenient for the electors of said town that there should be two (or more) election districts therein at the general (or special) election to be held in said town on the _____ day of _____, 190—; Now, therefore, it is ordered that said town be, and is hereby divided into two (or more) election districts, to be known as Election District Number One, and Election District Number Two, of the town of _____ as follows: (*specifying boundaries of each district*); that the polls in said District Number One shall be held at _____, and that A B, C D and E F shall, if present, act as inspectors of election at such polls, and G H and I J as clerks of election, and K L and M N as ballot clerks; that the polls in said District Number Two shall be held at _____, and that G H, I J and L M shall, if present, act as inspectors thereat (*and so continue for each district, designating place and election officers*).

Given under our hands this _____ day of _____, 190—,

*Town Board of
Supervisors.*

¹The form above given can be adapted to the second provision by substituting for the words "deem it more convenient for the electors of said town," the words "have been petitioned by fifty or more electors of said town, to divide said town into _____ election districts."

FORM OF ORDER DIVIDING ELECTION DISTRICTS WHEN 600 OR MORE VOTES ARE CAST THEREIN.

WHEREAS, it appears from the election returns that six hundred votes (or more) were cast in Election District No. — in the _____ ward of the city of _____ (*or in the village or town of* _____): Therefore, Resolved, that the said Election District be and the same hereby is divided into two (*or three*) election districts to be known as Election District Number 1 of the _____ ward of _____ (*or of the village or town of* _____) with boundaries as follows: (*here specify boundaries*); Election District No. 2 of the _____ ward (*or of the village or town of* _____) with boundaries as follows: (*here specify boundaries*): that the polls in said District Number 1 shall be held at (*specify where*): and that A B, C D and E F shall, if present, act as inspectors of election at such polls, and H, I and J K as clerks of election, and L M and N O as ballot clerks (*and so on as to other districts*).

or resolution shall designate the districts by numbers, and the place where the election in each shall be held, which place shall be fixed with a view to the convenience of the largest number of voters. The order dividing a town into districts shall designate the persons who shall act as election officers, if present in the district or districts thereby created. The persons so designated shall possess the qualifications hereinafter prescribed and represent the political parties in accordance with the provisions of this chapter respecting the officers of election in cities and villages. One of the persons named as inspectors for each district shall be designated as chairman. When a town is thus divided into election districts, the annual town meeting and all judicial and special town elections shall be held at election district number one; all other elections shall be held at the districts as divided. It shall be competent for town boards, village trustees or common councils to change the boundaries of election districts without creating new districts, subject to the foregoing conditions as to time, compactness of territory, filing of a copy of the order or resolution and posting copies thereof.

Annual Town Meeting. Ch. 416, laws of 1885, required town boards to divide towns into election districts upon petition of fifty or more electors, and provided "that all town meetings be held at the polling place to be known as the first precinct." The order making the division limited its effect to a particular election. Held, that town officers chosen at the town meeting held at the first precinct were entitled to their offices, regardless of the votes cast at the second precinct: *State v. Waterbury*, 79 Wis. 207; *State v. Doyle*, 84 id. 678.

See note to paragraph 185.

Failure to make election districts. An election will be set aside where officers have failed to divide a town into districts in consequence of which there was such congestion at the polls that a large number of persons entitled to vote were unable to do so, they being in line waiting to vote when the polls were closed: *Matter of Griffin*, 35 N. Y. Misc. 532.

80. Court or judge may compel division. [Sec. 17, Statutes of 1898.] If the council or board whose duty to make a division shall have become imperative under the preceding section shall fail or refuse so to do as therein specified, any voter of such city, town or village may apply to the proper circuit court or the presiding judge thereof for an order compelling such division. Such court or judge may, after reasonable notice has been given to the council or board proceeded

against, order such division if it appear that it has become the duty thereof to make the same. Failure to obey such order within the time specified unless the same be stayed or superseded, shall be deemed a criminal contempt. Until divided all elections shall be held in the districts as previously established.

81. Election not held where liquors sold. [Sec. 18, Statutes of 1898, as amended by ch. 132, laws of 1903.] No election for any purpose whatever shall be held in a room where intoxicating liquors are on sale or are usually sold, nor in any room communicating with a place where such liquors are then or are usually sold nor shall any beer or any other intoxicating liquors be admitted or drank in any room or booth where any election is being held. Any officer whose duty it shall be to hold, manage, supervise or inspect any election who shall offend against the provisions of this section shall forfeit not more than one hundred dollars nor less than twenty-five dollars, and the costs of the prosecution. Actions to recover such forfeiture may be instituted by any citizen.

82. Change of place of holding. [Sec. 19, Statutes of 1898.] Whenever it shall become impossible or inconvenient to hold an election at the place designated therefor, the board of inspectors, after having assembled at, or as near as practicable to, such place, and before receiving any votes, may adjourn to the nearest convenient place for holding the election, and at such adjourned place shall forthwith proceed with the election. Upon such adjournment said board shall cause proclamation thereof to be made,¹ and shall station a constable or other proper person at the place where the adjournment was made to notify all electors arriving at such place of the adjournment and the place to which it was made.

See note to paragraphs 78, 185.

¹ FORM OF PROCLAMATION.

Hear ye! hear ye! hear ye! The polls of this election are adjourned to (state place to which polls are adjourned); at which place the election will forthwith be proceeded with.

NOTICE OF ELECTION, HOW GIVEN.

83. By secretary of state. [Sec. 20, Statutes of 1898, as amended by ch. 20, laws of 1905.] The secretary of state, between the first day of July and the first day of September in each year in which state officers, representatives in congress, members of the assembly and state senators are to be elected for a full term of office, or in which electors of president and vice-president are to be elected, shall make out a notice in writing stating that at the next general election to be held on the Tuesday next succeeding the first Monday in November following, the officers aforesaid, or so many of such officers as are then to be chosen, are to be elected, and specifying in the case of such representatives and senators the respective districts in which they are to be elected, and shall publish a copy of such notice in a newspaper printed at the seat of government once in each week from the date of such notice until the election to which it refers, and shall transmit by mail a like notice to the county clerk of each county, specifying the said officers to be voted for in said county, and in case of a senator, the number of his district, and also any constitutional amendment or other question to be submitted to the electors of the state for a popular vote.

Duty ministerial. The official acts of the secretary of state in issuing and publishing notices of election are purely ministerial, and may be controlled by mandamus or injunction: *State v. Cunningham*, 51 Wis. 440, 481.

Specifying officers to be voted for. The notice to a county clerk need only contain the names of officers to be voted for by the electors of the county: *Fernandez v. Winnebago Co.*, 53 Wis. 247.

84. By county clerks. [Sec. 21, Statutes of 1898, as amended by sec. 1, ch. 96, laws of 1899, ch. 408, laws of 1903, ch. 342, laws of 1905.] The county clerk thereupon shall forthwith cause a notice¹ containing so much of the notice so re-

¹ FORM OF COUNTY CLERK'S NOTICE TO TOWN AND VILLAGE CLERKS AND INSPECTORS OF ELECTION IN WARDS AND CITIES.

General Election Notice.

— County, County Clerk's Office, —, 190—.

Sir:—A general election is to be held in the several towns, wards, villages and election districts, in said county, on the Tuesday next succeeding the first Monday, being the — day of — November, 190—, at which are to be elected the officers specified herein in accordance with the substance of a notice received from the secretary of state; also a member of assembly in place

ceived by him as relates to the question and officers to be voted for in his county, together with a statement of the several county officers to be elected by the voters of his county to be published as follows: In counties containing a population of 250,000 such notice shall be published in not less than two and not more than four newspapers published therein; in all other counties of the state such notice shall be published in not more than two newspapers published therein, one of which publications shall be made in a newspaper which advocates the principles of the political party which at the last preceding election cast the largest number of votes, and another publication shall be made in a newspaper which advocates the principles of the political party that then cast the next largest number of votes. Such notice shall be published once each week until election and shall be transmitted by mail to each town clerk, and the clerk of each village in which the next ensuing general election will be held, and to one of the inspectors of election in each election district in every city of his county. Whenever the office of county clerk is vacant and there shall be no person authorized to perform his duties, the sheriff shall take out and so transmit such notices.

Notice of election. In the case of general and regularly recurring elections, the failure of officers to give notice thereof cannot affect the right of electors to vote for officers who are then to be elected for a full term: *Jones v. Gridley*, 20 Kan. 584; *Morgan v. Beard*, 24 id. 71.

If the time and place of holding an election are not fixed by law and the duty of fixing them is devolved upon some officer or body, notice must be given: *Hubbard v. Williamstown*, 61 Wis. 397. In such case the notice is not sufficient if it leaves to inference the place where the polls will be or the time they will be open: *Morgan v. Gloucester*, 44 N. J. L. 137. It must be given for the prescribed time (*Hubbard v. Williamstown*, 61 Wis. 397) and cover all the precincts where the election is to be held: *Territory v. Steele*, 23 N. W. Rep. 91.

If a vacancy is filled at a general election in pursuance of a positive statute, the failure to give notice will not affect the result if the

of ———, whose term of office will expire on the second Wednesday in January, 190— (in counties comprising more than one assembly district notice should read): A member of assembly in the first assembly district, comprising the towns, wards, etc., of (here enumerate towns, wards, etc.) in place of ——— (and so of each district in the county) whose several terms of office will expire, etc. (When county officers are to be elected, they also must severally be named in a similar manner.)

To ———, (town or village clerk, or inspector of election in the ——— ward of city of ———, as the case may be.)

[If a constitutional amendment or other question is to be voted on the notice should contain so much thereof or such notice concerning it as the law providing for the submission of the question requires.]

County Clerk.

elector had actual knowledge that it was to be filled. *State v. Orvis*, 20 Wis. 235; *State v. Goetze*, 22 id. 363. But if the statute is not explicit that the vacancy shall be then filled and notice is not given, and the vote shows that it was not generally known that the election was then to be held, the result will not be binding: *Secord v. Foutch*, 44 Mich. 89; *People v. Witherell*, 14 id. 48. And the same result will follow if the statute is imperative as to the time of election if the vote shows that the electors were not aware of the fact: *State vs. McKinney*, 25 Wis. 416.

Voters have a right to be informed of the time and place and for what officers they may vote, and *mandamus* will issue to compel officers who are charged with the duty of giving notice to act: *State v. Ware*, 10 Pac. Rep. 885; *State v. Brown*, 38 Ohio St. 345; *Stephens v. People*, 89 Ill. 337. See, as to the effect of informality in giving notice, paragraph 154.

Publication of notice, and fees therefor. Sec. 10, ch. 283, laws of 1893, provided that after the county clerk had received the election notice from the secretary of state he should forthwith cause a notice containing the substance of the notice so received by him, together with a statement of the several county officers that are to be elected, to be published in at least one newspaper in the county." Held, that the action of the county clerk in causing the proposed banking law of 1897 to be published as part of the election notice was without authority, and the county was not liable for the expense thereof; that such authority was not conferred by sec. 21, Statutes of 1898, which took effect after such notice was first published; that sec. 10, ch. 283, laws of 1893, required but one publication of the election notice; that the county clerk could not bind the county by contracting for a publication of such notice in excess of the time fixed by law, and that the county board could not bind the county by voting payment of the claim for such publication, nor by compromising it. *Endion Imp. Co. v. Evening Telegram Co.*, 80 N. W. Rep. 732; 104 Wis. 432.

Notice of license election. Sec. 1548*b*, Ann. Stats., provided, in effect, that notice of a special election to fix license fees shall be given in the manner provided for giving notice of general elections. Held, that notice given in accordance with this and the two preceding sections was sufficient; paragraphs 65, 66 do not apply to such an election: *State v. Janesville*, 90 Wis., 157.

Presumption. In the absence of proof in the record to the contrary, the presumption is that notice of an election was regularly given: *State v. Janesville*, 90 Wis. 157, 160.

85. Necessary qualifications of newspaper to publish election notice. [Sec. 1, ch. 319, laws of 1899.] All publishers of daily newspapers printed in whole or in part in a printing office at the place where such daily newspaper purports to be published, in any county, or in any city of the third or fourth class,¹ in the state of Wisconsin, shall not be awarded or be entitled to any compensation or fee for the publishing of any election

¹ For the law classifying cities, see paragraph 255.

notice, nomination ticket, summons, order, citation, notice of sale or other notice, and every other advertisement of any description required to be published by law, or in pursuance of any law, or of any order, of any court, unless such daily newspaper, shall have a bona fide circulation to actual subscribers, of not less than three hundred copies per day, and shall have been regularly and continuously published in such county or such city of the third or fourth class each day, Sundays excepted, for at least two years, immediately before the date of such notices.

86. Notice by city, village and town officers. [Sec. 22, Statutes of 1898.] Every such town and village clerk and inspector shall, ten days previous to any general election or on receiving any such notice, give to the town, village and election district electors, respectively, notice² of such election by posting notices in five conspicuous places in their towns, villages and election districts, stating the time when and place where the election will be held, the officers to be voted for, whether any of them are to be chosen to fill vacancies, in which case the names of the last incumbents of the offices in which vacancies exist shall be given.

Who may post notices. The officers named in the statute may employ other persons to post election notices: *Phillips v. Albany*, 28 Wis. 340.

Conspicuous places. If an officer acts in good faith in posting notices, courts will not ask whether they were posted in the most public places: *Sauehering v. Railroad Co.*, 25 Wis. 447.

**FORM OF NOTICE BY TOWN OR VILLAGE CLERK OR INSPECTORS
OF WARDS.**

General Election Notice.

COUNTY OF _____, } ss.
Town of _____, }

Notice is hereby given that the ensuing general election, at which are to be elected the following officers, to-wit: (*here give the substance of the notice received from the county clerk*), will be held at _____, in the town (or village) of _____ or _____ ward of _____, on the _____ day of November next, and that the polls of said election will be open at nine o'clock in the forenoon and closed at sundown on that day.

Dated _____, 190—.

_____,
Town or village clerk,
or,

_____,
_____,

_____,
Inspectors,
as the case may be.

[See paragraph 102 as to the time of opening and closing the polls in certain cities, and the authority of town and village boards to fix the time therefor. The notice should correspond, in this particular, with the statute or the action of the local authorities where they are authorized to act.]

PRINTING AND DISTRIBUTION OF BALLOTS.

87. Ballots, how printed—Candidates for county superintendent—Election by candidate of more than one party. [Sec. 38, Statutes of 1898, as amended by sec. 3, ch. 457, laws of 1901.] Section 38. Every ballot printed under the provisions of this chapter for use at general elections shall be upon white print paper at least twelve inches wide and of any sufficient length to afford space for all the tickets of several candidates in columns therein; said paper shall be cut from sheets twenty-four by thirty-six inches in size, and weighing thirty-five pounds to the ream; if a different sized sheet is used the weight per ream shall be proportioned as above. The several regular party tickets nominated by conventions or by regularly constituted and authorized committees, shall be printed each in a separate column, under the appropriate party designation, the columns to be arranged alphabetically according to the first letter of the party name, thus democratic party, labor party, prohibition party, republican party, which columns are to be separated by heavy black lines no less than one-eighth of an inch wide; such party designation to be given as hereinbefore provided. On the left hand side of the ticket shall be a column designating the office to be voted for, and on the same line, in the columns under the appropriate party designations of each, all the names of candidates duly nominated for that office, shall be printed in a space separated from the other names in that column by a line not less than one-sixteenth of an inch wide; provided, that no county clerks shall place the name of any person upon such ballot as a candidate of the office of county superintendent of schools, unless such person shall have filed in such clerk's office, at least ten days before the day of election at which such superintendent is to be elected, proof of having successfully taught in one or more of the public schools of this state, for the period of eight months, and a copy of a certificate entitling him to teach in any such school or of a certificate known as a county superintendent's certificate unless such person, before the first day of May, 1895, had held the office of county superintendent of schools in this state. There shall be a space of two inches at the top of each column in which shall be placed the party designation and under that the names of the candidates for president and vice president, respectively, of that party; and in the space under the

party designation and names of the candidates for president and vice president a circle of three-eighths of an inch in diameter formed by black lines, in which the voter by his mark may declare that he votes for all names printed in that column, except such as are erased or written over or otherwise marked, as hereinafter specified. There shall also be left under the name of each candidate sufficient space to write a name therein in lieu of the one printed; and under the name of each candidate there shall be a space inclosed in a square of black lines in which the voter may designate by a cross mark, or other mark, his choice for each candidate. No pasting names over a ticket or over any names thereon shall be allowed, and no names so pasted shall be counted except as provided in section 34.¹ When any person is nominated for the same office, by more than one party or convention, his name shall be placed upon the ticket under the designation of the party which first nominated him, or if he was nominated by more than one party or convention at the same time, he shall, within the time fixed by law for filing certificates of nomination, file with the officer with whom his certificate of nomination is required to be filed, a written election indicating the party designation under which he desires his name to be printed on the ballot, and it shall be so printed. If he shall refuse or neglect to so file such an election, the officer with whom the certificate of nomination is required to be filed, shall place his name under the designation of either of the parties by which he was nominated, but under no other designation whatever. The names of persons nominated by paper nominations shall be placed in one or more columns under the designation of the individual nominations, and on the same line with the office for which they are nominated, and after the name of each shall be printed his party designation as given in his nomination papers, and under that the space for marking, provided that the name of the same individual shall not be placed on the ticket under the head of individual nominations if his name already appears under a party designation. On the back and outside of every ballot shall be printed the words, official ballot for..... followed by the designation of the polling place for which the ballot is prepared and the date of the election, the official endorsement and blank certificates in the following forms: I certify that the within ballot was marked by

¹ Paragraph 63.

me for an elector incapable under the law of marking his own ballot, and as directed by him.

.....,
Inspector of Election.

I certify that the within ballot was marked by me for a blind elector at his request, and as directed by him.

.....

No party designation need be placed upon the ballots for school or judicial officer, except for county or district superintendent of schools outside of cities. Ballots for judicial and city elections shall be printed upon the quality of white print paper hereinbefore specified, and shall be of sufficient size to afford space for all the tickets or several candidates in columns therein. Party candidates shall be arranged thereon as above provided for ballots at general elections, and the names of persons nominated by nomination papers, and not included in the regular convention tickets, shall be placed as is provided for individual nominations on the ballots at general elections. Such ballots shall have similar matter printed on the back and outside as other official ballots are required to have.

Names shall be printed. In *State v. Van Camp*, 54 N. W. Rep. 113, the Nebraska court refused to reject the ballots cast in one county because the name of one candidate was written thereon, and on the sample ballots, by the county clerk in correction of an error made in printing them. It had previously been held there that a statute requiring ballots to be marked with ink is directory only. *State v. Russell*, 51 N. W. Rep. 465.

Party designation. The provision requiring the name of the party to be upon the ballot does not make the law unconstitutional: *State v. Black*, 24 Atl. Rep. 489.

Paper nominations. The Illinois statute provides that the lists of candidates of the several parties and groups of petitioners shall be placed in separate columns on the ballot. Where several independent candidates nominated by petition were placed in one column under the heading "citizens' ticket," a mark in the circle opposite that heading was a vote for the candidates named in the column beneath. The court observed that "however erroneous the action of the clerk may have been in failing to place the names of all independent candidates nominated by petition in one column, after an election the will of the majority is not to be defeated by an informality in printing ballots where the voter has indicated his choice in pursuance of law." *Murphy v. Battle*, 155 Ill. 132; *People v. Wood*, 148 N. Y. 142, 146.

The failure of a political party to nominate a candidate for a particular office does not entitle a nominee by paper nomination who is stated

therein to represent the principles of such party to have his name grouped with those of the candidates regularly nominated by it: *Atkeson v. Lay*, 22 S. W. Rep. 481.

Error in political description of candidate. "The statute requiring that the ballot shall contain the name of the party or principle which the candidate represents is directory, and is intended as a help and a guide to the voter, and it should be complied with; . . . yet, as the voter has nothing to do with the preparation of the ballot, he cannot be deprived of the right to have his vote counted for the candidate of his choice because the ballot omits the candidate's correct political affiliation. 'Innocent irregularities of election officers, which are free of fraud, and have not prevented the free and fair expression of the popular choice, will not vitiate the result of an election unless the legislature has so expressly declared.'" Where an opportunity is provided for the inspection of ballots and the correction of errors therein (see paragraph 113), an objection to them comes too late after election: *State v. Norris*, 55 N. W. Rep. 1086, 1091; *Allen v. Glynn*, 29 Pac. Rep. 670.

Provisions, how far mandatory. See preceding notes to this section. A mistake whereby the name of the candidate for presidential elector is printed under two political designations, in contravention of a provision that the name of each person nominated shall be printed upon the ballot in but one place, does not affect the validity of the election. "The law is mandatory in the sense that it demands and requires the county clerks, in the preparation of the official ballot, to strictly comply with all its provisions, but not in the sense that a voter's right to exercise his elective franchise will be lost because of some technical mistake of the county clerk in printing the names of candidates upon the ballot:" *Miller v. Pennoyer*, 31 Pac. Rep. 830; *People v. Wood*, 148 N. Y. 142, 146; *Bragdon v. Navarre*, 102 Mich. 259.

In Indiana a statute which requires the ballot clerks to write their initials in ink on the lower left-hand corner of the back of the ballots, without any distinguishing mark of any kind, has been held to be directory only, where the clerks mistakenly marked all the ballots otherwise: *Parvin v. Wimberg*, 30 N. E. Rep. 790.

A statute which provides the order in which the party tickets shall be placed on the ballots is mandatory: *Baker v. Board*, 68 N. W. Rep. 752.

Statutes prescribing the form of ballots and kind of paper on which they are to be printed, and prohibiting marks, figures or devices thereon by which one can be distinguished from another, are designed to preserve the secrecy of the ballot and to prevent fraud, intimidation or bribery; and they are generally held to be mandatory, and are always so held when such statutes provide that a ballot varying from such requirements shall not be counted: *Daniel v. Simms*, 39 S. E. Rep. 690 (W. Va.).

Name on ballot but once. Section 2, ch. 348, laws of 1897, provided that "when any person is nominated for the same office by more than one party or convention his name shall be placed upon the ticket under the designation of the party which first nominated him; or if he was nominated by more than one party or convention at the same time, he shall, within the time fixed by law for filing certificates of nomination, file with the officer with whom his certificate of nomination is required

to be filed a written election indicating the party designation under which he desires his name to be printed on the ballots, and it shall be so printed. If he shall refuse or neglect to file such an election, the officer with whom the certificate of nomination is required to be filed shall place his name under the designation of either of the parties by which he was nominated, but under no other designation whatever." Held, not to be unconstitutional, and to prevent all double printing of names, even in case all the candidates of one party are also the nominees of another. *State v. Anderson*, 100 Wis. 523.

88. Offices, arrangement of, on ballots—Questions submitted to vote. [Sec. 39, Statutes of 1898, as amended by chapter 423, laws of 1903.] On ballots to be used at general elections the order of arrangement of offices to be filled shall be:

First. Under the head of "national," the presidential electors, if any, the list of which may be headed by the names of the nominees of the party for president and vice-president.

Second. Under the head of "state," the names of the several state offices to be filled, thus: Governor, lieutenant-governor, secretary of state, treasurer, attorney-general, state superintendent, railroad commissioner, commissioner of insurance and such other elective state officers as may be provided by law.

Third. Under the head of "congressional," the member of congress of the district.

Fourth. Under the head of "legislative," the state senator and member of assembly.

Fifth. Under the head of "county," the county officers in the order prescribed in section 698,¹ including the county superintendent of schools for the district.

If any officer to be elected is to fill a vacancy, that fact shall be so specified upon the ballot. Whenever a proposed amendment to the constitution or other question shall be submitted to the people, a concise statement of the nature thereof shall be printed in accordance with the act or resolution directing its submission, upon the ballot after the names of the candidates and separated therefrom by an appropriate line or rule, and opposite the question submitted shall be two spaces, over one of which shall be printed the word "yes," and over one the word "no," and the voter may mark his ballot in the space under whichever word indicates his vote on the question, unless the act or resolution provide or require a different form of ballot, in which case a proper form of ballot shall be furnished. Provided, however, that in election districts in which voting machines are used no ballot clerks shall be appointed.

¹ Paragraph 179.

Informality of ballot as to a constitutional amendment submitted to a vote does not afford a candidate ground for contesting the election: *Atkeson v. Lay*, 22 S. W. Rep. 481, 485.

Errors in ballot. Facts and circumstances of public notoriety admissible when doubt arises from misspelling name or adding different or erroneous Christian names. *Att'y Gen. v. Ely*, 4 Wis. 420. When designation of office on ballot applies to two or more offices, evidence of surrounding circumstances admissible to show intention of voter: *State v. Goldthwaite*, 16 Wis. 146.

An error in the title of the office as printed on the ballots will not invalidate an election—as where the word “councilman” was used instead of “trustee”: *Jones v. State*, 153 Ind. 440.

Form of ballot on questions submitted. In *Hopkins v. Duluth*, 83 N. W. Rep. 536, a statute requiring that the ballots contain the words, “Shall the proposed new charter of the city of Duluth be ratified?” was held to be satisfied by ballots which contained in addition to those words, these: “returned by the mayor of said city, January 8th, 1900.” The court said: “The extra words of the submission were merely descriptive in character, need not have been included, add nothing to the intelligent meaning of such submission, and the same was valid under the former rule of this court. *State v. Stearns*, 72 Minn. 217, 75 N. W. Rep. 210.”

Form of ballot. See paragraph 162.

County Superintendent. Who ineligible to office of, see paragraph 181.

89. Form of ballots.¹ [Sec. 40, Statutes of 1898, as amended by sec. 3 (4), ch. 457, laws of 1901.] The official ballots for general elections and for regular city elections, with the indorsements thereon, and the instructions given at the head thereof as herein amended, shall be in substantially the annexed form, provided, that ballots for such city elections may be varied as to the titles of the offices to be printed thereon, to conform to the law under which each such election is held.

October 22, 1904.

Honorable WALTER L. HOUSER,
Secretary of State.

Dear Sir:—I am in receipt of yours of the 22nd inst., in which you say that you would like my advice as to making up the official ballot, in respect to whether or not, in the column of individual nominations, the names of the candidates for President and Vice President should be placed at the top of the column, also whether the circle in which a voter can vote the entire party ticket should be placed at the top of the column.

In order to arrive at a correct solution of this question, a consideration of several provisions of the statute is necessary. In order to

¹ The form of ballot mentioned was omitted from the enrolled act. The one inserted here has been prepared in accordance with the statute as construed by the Attorney General. The opinion of the Attorney General follows:

authorize a political party to have the names of its candidates printed on the official ballot under a party designation, the candidates must be nominated by a convention or primary meeting held for the purpose, consisting of an organized assemblage of electors representing the political party which, at the last preceding general election before such convention polled at least one per cent. of the entire vote cast in the state. (Sec. 30, Wis. Stat. 1898, as amended by chap. 351, laws of 1899.) No other party ticket can appear upon the official ballot except in case of a division in a political party, as provided in sec. 35, Wis. Stat. 1898. Under the provisions of section 40, Wis. Stat. 1898, as amended by chap. 457, laws of 1901, it is provided that the official ballot is to be substantially in the form therein prescribed. However, the enrolled bill, which is now chap. 457, laws 1901, does not contain the form of the ballot, but the act itself does direct specifically how the ballot is to be made. The form as contained in the engrossed copy of the bill provides for a party ticket known as the "People's Ticket," also a Socialist Labor Party Ticket. Neither of these so-called parties has nominated candidates as a party to be voted for at the coming election, and no candidates could have been nominated by those parties, for the reason that neither of them cast one per cent. of the entire vote cast in the state at the last preceding general election.

The provisions cited all refer to party nominations made by parties which are organized as such and cast the required vote at the last general election.

It is evident, therefore, that, if the two so-called parties are not such within the meaning of the statute, or if they nominate no candidates as a party they have no right to the party name on the official ballot.

I call your attention to this for the reason that, on the form submitted, you have placed in the space under the words "Individual Nominations," the party name. This is not required by any provision of the statute. However, nomination papers have been filed containing a list of candidates in which the party or principle said to be represented by the candidates so nominated is given as "People's Party," and another set of nominations, where the party or principle is designated as "Socialist Labor Party." Both of the candidates nominated by these nomination papers must appear on the official ballot under the head "Individual Nominations," and the question is, whether the names of the candidates for President and Vice President and the circle should appear in the space under the words "Individual Nominations."

The form as appears in the bill which became Chap. 457, Laws 1901, indicates that the names of the candidates for President and Vice President are to appear in the column under "Individual Nominations," but the statute itself does not so provide, in my opinion. Neither does it provide that the circle shall appear in the column under "Individual Nominations," but it does appear in the form referred to.

The statute carefully defines how the ticket is to be made. The regular party tickets are to be printed each in a separate column under the appropriate party designation. There is to be a space of two inches at the top of each column, in which shall be placed the party designation, and under that the names of the candidates for President and Vice President, respectively, of that party, and under those names a circle of three-eighths of an inch in diameter, formed by black lines, in which the voter by his mark may declare that he votes for all names printed in that column.

These provisions plainly refer to the form of the ballot for regular party tickets. The same section of the statute provides what the

form shall be when it comes to the names of persons nominated by paper nominations. They shall be placed in one or more columns under the designation of "Individual Nominations," and, after the name of each, shall be printed his party designation as given in his nomination paper and, under that, the space for marking.

So it appears from these provisions that there is no requirement that the party name or principle shall appear in the square at the top of the ticket, nor that a circle shall appear therein, so far as individual nominations are concerned. There is no provision for voting a whole column by marking in the circle, except as applied to party nominations. There is no provision that the candidates of an individual nominated for President and Vice President shall appear in the space at the head of the column.

The only reason, it seems to me, which can be advanced contrary to the conclusion I have arrived at is from the fact that the form given in the engrossed copy of the bill which became chap. 457, indicates that the candidates for President and Vice President and the circle shall appear in the square. This form, however, is not a part of the statute, since it is not a part of the enrolled act signed by the Governor, and, even if it is a part of the law, it ought not to be held that the form can control, where the provisions of the statute are specific, since the statute provides that the form of the ballot is to be substantially, and not literally followed.

My opinion, therefore, is that the statute does not require either the circle or the names of the individual nominees for President and Vice President to appear in the square.

Yours truly,

L. M. STURDEVANT,
Attorney General.

90. Who to provide ballots; expense of printing; correction of error. [Sec. 41, Statutes of 1898.] Except as in this chapter otherwise provided, it shall be the duty of each county clerk and city clerk to provide printed ballots for every election for public officers to be voted for in his county or city, and to cause to be printed in the appropriate ballot the name of every candidate whose name has been duly certified to or filed with him; and in any county containing a city of the first class such county or city clerk shall let to the lowest bidder the printing of all ballots and shall keep all proposals for such printing in his office; provided, such accepted bidder file with such clerk a bond in a penal sum of at least twice the sum of the accepted bid, signed by two sureties and conditioned for the faithful performance on the part of the accepted bidder of all the conditions duly imposed on him by such clerk at the time of receiving proposals for such printing. Ballots not provided by the respective county or city clerk shall not be cast or counted in any election, except as herein provided. But any voter may write upon his ballot the name of any person for whom he desires to vote for any office, in such place or so designated as to indicate the office, and such

vote shall be counted the same as if printed upon the ballot and marked by the voter; and any voter may take with him into the polling place any printed or written memorandum or paper to assist him in marking or preparing his ballot, except as hereinafter otherwise provided. Ballots shall be printed and in possession of the county clerk and city clerk at least four days before election, and in case of a city election the ballots shall be printed and in the possession of the city clerk at least two days before election, and subject to inspection by the candidates and their agents. If any mistake be discovered in printing or arrangement it shall be the duty of the clerk to correct the same without delay. In all general elections, including judicial elections, such ballots shall be printed and distributed solely at the expense of the county; in municipal elections, solely at the expense of the municipality.

Inspection of ballots. Voters are not to be disfranchised because an opportunity has not been afforded to inspect the ballots, nor can a candidate who is free from participation in fraud be defeated because of the neglect of duty by election officers: *Lindstrom v. Board of Canvassers*, 94 Mich. 467.

Objections to the form, etc., of ballots come too late after election where provision is made for their inspection and the correction of errors before they are distributed: *Allen v. Glynn*, 29 Pac. Rep. 670; *State v. Elliott*, 48 id. 734.

Counting sample ballots. In a Kansas case the election officers of a town were furnished with official ballots on white paper and with sample ballots on colored paper. By mistake the latter were used instead of the former, which were all returned; all the ballots cast were of the same color. It was held that the ballots cast should be counted: *Boyd v. Mills*, 37 Pac. Rep. 16.

Unauthorized names on ballots. The erroneous addition of the names of unauthorized candidates to the official ballots will not avoid the election at which such ballots are cast if objection is not made before the election: *Bowers v. Smith*, 20 S. W. Rep. 101 *Contra*, *Price v. Lush*, 24 Pac. Rep. 749; *State v. Barber*, 32 Pac. Rep. 14, 26.

In Illinois a candidate for office who has not made objection in the manner provided by statute to the printing of his opponent's name on the official ballot waives the right, after the election and in an action contesting his opponent's right to the office, to raise the question that the party which nominated the holder of the certificate of election had not, at the last preceding election, cast the required percentage of the total vote which entitled it to have the names of its candidates placed on the official ballot. *Schuler v. Hogan*, 168 Ill. 369, 48 N. E. Rep. 195.

Double nomination; name on ballot twice. In an English case it appeared that a candidate was twice nominated by petition, one nom-

ination being good, the other being invalid. His name appeared in the ballots twice, once in respect of each nomination, and he received votes under each. It was held that the bad nomination did not avoid the good one; that the votes cast for the nominee under both nominations, all the electors so voting having intended to vote for him, should be counted for him: *Northcote v. Pulsford*, L. R. 10 C. P. 476, 483. The English act provides that "each ballot paper shall contain a list of the candidates described as in their respective nomination papers." In answer to the question whether the name of a candidate twice nominated ought to be twice entered in the ballot paper, it was said that inasmuch as that paper is to contain a list of their candidates, and not a list of their nominations, the officer should enter the name of the candidate and either describe him only as in his correct nomination paper, or append to his name the descriptions in any of his nomination papers, if they differ. The name should be entered on the ballot only once. *Ibid.*

Counting irregular ballots. The word "provided" is not synonymous with "prepared" so as to disfranchise, for the time being, voters who have cast ballots provided by the proper officials, but which are erroneously prepared by them, as by wrongfully inserting names of candidates in a party column: *People v. Wood*, 148 N. Y. 142.

Voters finding a name or set of names upon a ballot regular in form may rely upon the action of the officer who placed it there: *Bragdon v. Navarre*, 102 Mich. 259.

Ballots prepared and furnished by the proper officers do not cease to be official because the inspectors of election unauthorizedly correct an error in the name of one of the candidates as printed thereon: *Cook v. Fisher*, 69 N. W. Rep. 264.

91. Number of ballots; sample ballots. [Sec. 42, Statutes of 1898.] There shall be printed, in the manner hereinbefore provided, by each county clerk and each city clerk, one hundred ballots for every fifty or fraction of fifty votes cast at any preceding election in each election district in the county or city. Each clerk shall, at the time of ordering official ballots to be printed, cause unofficial sample ballots to be printed upon tinted or colored paper, and in the same form as the official ballots, and delivered to the chairman of any political committee in the county or city, as the case may be, upon the request for such ballots by such committee, to an amount not exceeding one-tenth of the official ballots for each precinct in the county or city. Such request must be made before the printing of the official ballots, and they shall be paid for in the same manner that official ballots are paid for, without additional charge for composition. A committee may, at its own expense, order a larger supply of sample ballots than is required by this section. All ballots ordered printed by county

and city clerks shall be printed at the cost of their respective counties or cities as ordered.

92. Ballots for school officers. [Sec. 43, Statutes of 1898.] Where provision has been made in the charter of any city for the election of school officers by a separate ballot, separate official ballots for such officers shall be printed and furnished to the inspectors of election in the several wards in sufficient quantities to supply the electors.

93. Distribution of ballots; receipts; proceedings if ballots lost. [Sec. 44, Statutes of 1898.] Each county and city clerk shall send the ballots printed pursuant to his order for the several polling places in each city, village or town in the county as is provided by law to each city and town clerk and the clerk of each village, so as to be received by them at least twelve hours previous to the opening of the polls on the day of election, in separate sealed packages, with marks on the outside of each clearly designating the polling place for which they are intended and the number of ballots of each kind inclosed; and the respective city, village and town clerks shall, on delivery to them of such packages, return receipts therefor, keep a record of the time when, and the manner in which, the several packages are sent, and each county and city clerk shall preserve for the period of one year the receipts therefor; each city, village and town clerk shall send to the board of inspectors of each polling place in his city, village or town before the day of election the ballots so prepared, sealed and marked for each voting place, and a receipt of such delivery shall be returned to them from the presiding or senior election officer present, which receipt shall be kept in the clerk's office. In case the ballots to be furnished to any city, village, town or voting place therein shall fail for any reason to be duly delivered, or in case after delivery they shall be destroyed, lost or stolen, it shall be the duty of the clerk of such city, village or town to cause other ballots to be prepared, in printing or writing, substantially in the form of the ballots so wanting; and upon receipt of such other ballots from him, accompanied by a statement under oath that the same have been so prepared and furnished by him to replace the original ballots which have not been received, or have been so destroyed, lost or stolen, the election officers shall cause the ballots so substi-

tuted to be used in lieu of those so wanting. If from any cause the ballots are not ready for distribution at any polling place as heretofore provided, or if the supply shall be exhausted before the polls are closed, fac-simile unofficial ballots may be used, but the voter using it must, before voting, present it unmarked to the ballot clerks, have their signatures or initials indorsed thereon, and then he shall prepare it for voting.

Counting sample ballots. See note to paragraph 90.

POLLING BOOTHS AND PARTY REPRESENTATIVES.

94. Flag over voting place. [Sec. 1, ch. 254, laws of 1901.] That the common councils of the cities, trustees of the villages, and the township boards of supervisors may place and display the national flag on suitable staff over every voting place on general election and registration days for township, village, city, county, state and national elections and maintain them during every hour of such days of voting and registration.

95. Expense of flag, how paid. [Sec. 2, ch. 254, laws of 1901.] That such common councils, board of trustees, and township board of supervisors may provide the expense of such flags, and the erection, maintaining and care of the same, such expense to be included in and be a part of the general election expenses.

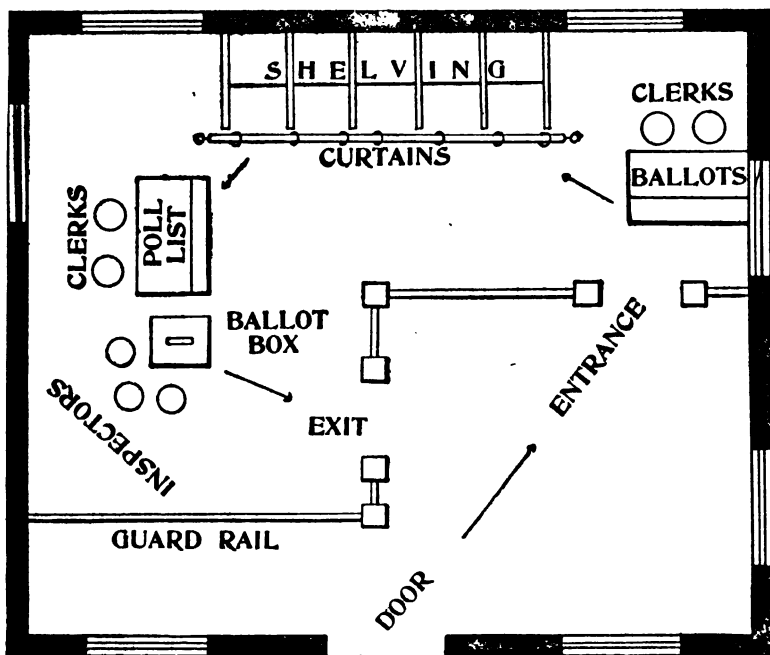
96. Polling places in fourth class cities. [Sec. 930a, Statutes of 1898, created by sec. 1, ch. 61, laws of 1901.] The common council of every city of the fourth class may provide at the city hall of such city, separate rooms with separate outside entrances thereto, upon which shall be conspicuously marked the respective numbers of the wards for which the same are intended to be used and designate the same as polling places respectively for the respective wards of such city, and all elections in and for each of the wards of such city for which polling places are so designated in the city hall shall be held at the places so designated.

97. When to be designated. [Sec. 930b, Statutes of 1898, created by sec. 1, ch. 61, laws of 1901.] Polling places in a city hall as provided in the preceding section, may be desig-

nated by the common council no later than ten days before any election at which such rooms are to be used as such polling places.

98. Booths, by whom and how made; expense of. [Sec. 45, Statutes of 1898.] All officers upon whom is imposed by law the duty of designating polling places shall, under the penalties elsewhere prescribed, provide and maintain in each polling place designated by them a sufficient number of places or compartments, at least twenty-four inches wide and deep, with shelves for writing,¹ which shall be furnished with such supplies and conveniences as shall enable voters to conveniently prepare their ballots, and each compartment shall be furnished with a door, screen or curtain of cloth so hung as to completely conceal the voter and any one who may lawfully assist him from observation while marking and preparing his ballot, and said room shall have a guard rail so constructed that only persons within said rail can approach within five feet of the

¹ The diagram represents a room 20x24 feet, but it may be made much smaller by contracting the space outside of the guard rail. Where polling place is already constructed the inside should be arranged like diagram.



eral election in the district. No person except the officers of election, other than voters engaged in receiving, preparing or depositing ballots, shall be permitted to be within said rail. The expense of providing and maintaining such places, shelves, compartments, doors, screens or curtains and guard rails shall be provided for in the same manner as other election expenses.

Failure to provide booths. A violation of Rev. Codes, §521, requiring inspectors of elections to provide booths where electors may mark their ballots screened from observation, and a guard rail, held to not necessarily destroy the secrecy of the ballot. *Perry v. Hackney* (N. D.), 90 N. W. 483.

Votes cast and counted will not be thrown out because election officers did not comply strictly with law as to booths and rails. *Ibid.*

Unauthorized persons within rail. A Michigan statute provides that no person shall be allowed within the railing except to vote or assist an elector in the preparation of his ballot, and that in case of necessity an interpreter may be employed. In *Maynard v. Stillson*, 66 N. W. Rep. 388, an interpreter who was hostile to one of the candidates for a county office was allowed inside the rail and while there conversed freely with voters who only understood their own language, and who had not applied for an interpreter's assistance. *Held*, that the statute was mandatory, and the vote of the precinct, having changed the result of the election, must be thrown out.

99. Party representatives, appointment of. [Sec. 46, Statutes of 1898.] Two party agents or representatives and a substitute or alternate for each, may be appointed for each polling place to act as challengers for their respective parties and candidates and to observe the proceedings of election officers. Such appointments may be made, in case of a city election, by the chairman of the political committee of any party that has nominated the candidates to be voted for thereat; in other cases of convention nominations, by the county or other proper local committee of the party making such nominations; and in case of candidates nominated by nomination papers, the candidates may appoint;¹ such appointment shall be in writing under the hand of the person making it, specifying the name

¹ APPOINTMENT OF PARTY OR CANDIDATE'S AGENT.

To _____,
(residence) _____.

Pursuant to law I hereby appoint you as agent or challenger to represent the _____ party (or me as a candidate for the office of _____) at election district number _____, in the township of _____ (or in the town of _____ or in the _____ ward of the city or village of _____, giving number of precinct if ward is divided), and county of _____, on the _____ day of _____, 190—. If said _____, of _____, cannot so serve or shall be absent for any part of said day from the polling place, I hereby appoint _____, of _____, in his stead.

_____, Chairman of _____ committee of _____,
or candidate for the office of _____

and residence of the appointee, election district for which he is appointed, and the name of some substitute to be appointed in case of his failure to serve or absence from polling place, and be filed with the clerk of the city, town or village at least three days before election. The clerk shall thereupon issue a permit¹ upon a printed slip or card, to such appointee, which shall be his warrant of authority to be present during the election and to be inside the railed inclosure during the counting of the ballots. If any person so appointed as agent fails to serve or shall be absent for any part of election day, the clerk may issue a permit to the substitute or alternate, who may act instead of such absentee or person failing to serve.

Absence of challenger. In a Minnesota case, involving the validity of an election to change a county seat, the notice of contest alleged the refusal of the inspectors to allow a voter favorable to the change to be present in the room where the election was held, but did not state that such person was chosen for that purpose. This omission was considered material. The court said that if the notice was sufficient in this respect that "it is not alleged that any fraud was practiced or injustice resulted on account of not having a challenger present in the room, and the entire vote of the township will not be disfranchised on account of an omission or disregard of some requirement of the law by the judges which it is not claimed changed the result of the election:" *Soper v. Board of County Commissioners*, 48 N. W. Rep. 1112.

ELECTION OFFICERS AND CONDUCT OF ELECTION.

100. Election officers, their appointment and qualifications.

[Sec. 47, Statutes of 1898, as amended by ch. 423, laws of 1903, as amended by ch. 432, laws of 1905, and ch. 2, laws of special session, 1905.] There shall be three inspectors, two clerks of election and two ballot clerks at each poll at every election held under the provisions of this title, who shall be qualified electors at such poll and election. Any inspector may administer any oath required by law in the registration of voters

¹PERMIT TO AGENT.

— having presented to me a paper under the hand of the chairman of the — committee of the —, of the — county (or under the hand of — a candidate for the office of —), appointing him as agent or challenger to represent the — party (or the said person as a candidate for said office), at election district number —, in the township of — (or in the town of — or in the — ward of the city or village of — giving the number of precinct if ward is divided), and county of —, he, the said —, is hereby permitted to act as such agent or challenger at the election on the — day of —, 190—.

Witness my hand this — day of —, 190—.

— Clerk of —.

[The above form can be readily adapted to the case of a substitute or alternate.]

or the conducting of an election. They shall be appointed or chosen in the manner following:

1. The mayor of every city shall nominate¹ to the common council thereof, at their first regular meeting in February of each year in which a general election is to be held, and if no such meeting is held, then at a special meeting, which he shall call for such purpose on the last Tuesday of said month, three persons for inspectors of election, two for clerks of election, and two for ballot clerks, in each election district therein.

The president of every village shall nominate to the board of trustees thereof, at their first regular meeting in February of each year in which a general or other election is to be held, under the provisions of this title, and if no such meeting is held, then at a special meeting, which he shall call for that purpose on the last Tuesday of said month, three persons for inspectors of election, two for clerks of election, and two for ballot clerks, in each election district therein.

Each of the persons so nominated shall be an elector in the district for which appointed; be able to read and write the English language understandingly, and shall not be a candidate to be voted for at such election, and not more than two of such inspectors, nor one of said clerks of election or ballot clerks so nominated, shall be of the same political party, but all such officers shall be chosen from the two parties which cast the largest vote in such district at the last preceding general election. The party which cast the largest vote being entitled to two inspectors, one clerk and one ballot clerk, and the

¹ FORM OF NOMINATION OF INSPECTORS OF ELECTION, ETC.

I, A. B., Mayor of the city of — (or president of the village —), do hereby nominate to the common council of said city (or to the board of trustees of said village) the following named persons to be inspectors of election, clerks of election and ballot clerks, respectively, in the several election districts of said city or village, to-wit:

For District No. 1, composed of the First ward (or otherwise as districts may be numbered or constituted).

C. D. —

E. F. —

G. H. —

For Inspectors of Election.

I. J. —

K. L. —

For Clerks of Election.

M. N. —

O. P. —

For Ballot Clerks.

For District No. 2, composed of the Second ward (or otherwise), etc. (Here give names as above and so on to the end.)

Dated —, 190—.

Mayor (or President.)

party receiving the next largest vote shall be entitled to one inspector, one clerk and one ballot clerk. The basis in each case shall be the vote of the party for the presidential elector receiving the largest vote at the last preceding presidential election, and such inspectors, clerks and ballot clerks shall be chosen from a list submitted to the mayor of the city, or to the president of the village, for that purpose by the regular county committee or city committee of the aforesaid two parties. Such list shall be submitted by the chairman from each ward to the city or county committee, and only such persons so selected by the chairman from each ward shall act as such inspectors, which list shall bear the signature of the chairman and secretary of said county or city committee. Such common council or board of trustees shall immediately approve or disapprove such nominations. If they disapprove as to any such nominee, the mayor or president shall immediately nominate another person, qualified as aforesaid, from the list of the two committees representing the two parties which cast the largest vote in said district in the last general election, and the mayor or village president shall continue to do so until the requisite number have been nominated and confirmed at such meeting. The persons so appointed inspectors, clerks, and ballot clerks, in cities, shall hold their offices for two years and until their successors are appointed and qualified, and shall act as such officers at every primary, general, municipal and special election following their appointment held within their respective districts, during such term. The persons so appointed in villages shall hold their offices until their successors are appointed and qualified and shall act at every election held under this title within their respective districts. Such inspectors shall fill any vacancy in their number, or in the number of such clerks by persons qualified as aforesaid, and may appoint one of their number as chairman.

2. In towns the supervisors shall be inspectors of election when they belong to the opposite political parties casting the greatest number of votes at the last preceding general election. Whenever the supervisors all belong to the same political party, then the supervisor last named in the clerk's certificate of election or recorded in the town clerk's office shall be ineligible and shall not act; but an inspector from the electors present, possessing the qualifications aforesaid, and belonging to the opposite political party casting the greatest number of votes as aforesaid, shall be chosen in his place by the viva

voce vote of the electors present at the polling place at the opening of the polls. The town clerk, if present, shall be one of the clerks of election, and the inspectors shall, before opening the polls, appoint another; if he be absent they shall appoint two, and also two ballot clerks. All such clerks shall possess the qualifications hereinbefore prescribed, and belong to the two opposite political parties casting the largest vote as aforesaid.

3. When a town is divided into two or more election districts as provided in this chapter, the persons named in the order of division shall be election officers at the first election in the district or districts created by such order, and shall hold their offices until their successors are appointed and qualified. The boards of such towns shall, not later than the last Tuesday of September in each year when a general election is to be held, appoint by an order in writing, which shall be filed with the town clerk, officers of election for each election district therein, other than the first; the persons so appointed shall hold their offices until their successors are appointed and qualified. One of the persons appointed inspectors for each district shall be designated as chairman. All the persons so appointed shall possess the qualifications prescribed by the first subdivision of this section.

4. If at the time fixed for opening the polls on the day of election at any polling place the inspectors, clerks or ballot clerks, or any of them, fail to appear or refuse to act, or have become incapable of acting, the inspectors, if a majority be present, may fill such vacancies. If otherwise, or if the inspectors present fail or refuse to fill the vacancy, the electors present may fill the same by viva voce vote, by choosing some elector present possessing the qualifications and belonging to opposite parties as aforesaid. Provided, however, that in election districts in which voting machines are used no ballot clerks shall be appointed.

5. Any mayor of a city or any president of a village or any official who violates any of the provisions of this act shall upon conviction be punished by a fine of not less than five hundred dollars nor more than one thousand dollars or by imprisonment in the county jail of not less than six months nor more than one year, or both.

Qualifications of officer. A clerk who is not a qualified elector because under age is nevertheless a *de facto* officer, and the will of the

electors will not be defeated because of his minority: *Bell v. Faulkner*, 19 S. W. Rep. 480.

A majority of the West Virginia court was held that the mere fact that the law requiring ballot clerks to be chosen from opposing political parties is not observed is not, of itself, sufficient to justify the exclusion of the ballots cast at such polling place. Neither is the fact that two more such clerks were appointed than the law provides for, no evidence of fraud or corruption being given. It was said that ordinarily such conduct, unexplained, raises grave suspicions, and it would require but a small amount of additional evidence to destroy the presumption of fairness and sustain the charge of corruption: *Dial v. Hollondsworth*, 19 S. E. Rep. 557.

In *Quinn v. Markoe*, 35 N. W. Rep. 263, it was sought to exclude a return because two of the inspectors could not read the English language. It was said that "there is nothing better settled than that the acts of election officers *de facto*, being in under color of election or appointment, are valid as to third parties and the public. The doctrine that electors may be disfranchised because one or more of the judges of election did not possess all the qualifications required by law finds no support in the decisions of any judicial tribunal."

In the absence of fraud the acts of *de facto* election officers, so far as they affect third parties or the public, are as valid as those of *de jure* officers. An election is not invalidated because some of the officers who conducted it were not citizens: *Opinions of Justices*, 70 Me. 565. Or were appointed by another officer instead of being chosen by the electors: *Sergeant v. Wilder*, 71 Me. 380. Or were candidates at the election: *Trustees v. Ganvey*, 80 Ky. 159; *Sprague v. Norway*, 34 Cal. 173; *People v. Avery*, 102 Mich. 572. Or were disqualified by virtue of a constitutional provision: *Swepton v. Barton*, 39 Ark. 549.

Elections conducted fairly and honestly, no fraud or illegal voting being charged or shown, will not be set aside for mere irregularity in the manner of the appointment of the election officers or in the conduct of the election. *Hankey v. Bowman*, 84 N. W. Rep. 1002 (Minnesota).

In *State v. Luy*, 103 Wis. 524, 529, *Dodge, J.*, in commenting upon the fact that the three inspectors were of the same political party said that "the utter disobedience of the statute which requires that the three inspectors shall not be of the same political party is most reprehensible. That provision is of the gravest importance for the protection of the rights of voters and candidates, and of purity in elections. This case offers an excellent illustration of the outrages upon those rights likely to result from disobedience. Here, out of a total of 32 so-called ambiguous ballots rejected by the inspectors, it appears that 27 should have been counted for the candidate of the party opposed to those who made up this illegal board of inspectors. The inference of unfairness, if not fraud, is almost irresistible, especially when the public were unlawfully excluded from their right to observe the count, as given by section 76, Rev. St. 1898," paragraph 129.

The fact that election judges were not equally apportioned between the two leading parties, as required by statute (*State v. Sadler*, 58 Pac. Rep. 284), and that the election was conducted by less than the prescribed number of judges, do not invalidate it, it not being shown that

any harm or prejudice resulted or that there was an intentional or fraudulent deviation from the law: *Sanders v. Lacks*, 142 Mo. 255.

Liability of inspectors. In passing on the qualifications of those who offer to vote inspectors are not criminally responsible for errors of law or judgment: *Byrne v. State*, 12 Wis. 519.

Appointment of clerks. If persons cannot be induced to serve as clerks the election is not to fail for that reason. The inspectors must perform the duty which ordinarily is devolved upon the clerks: *People v. Cook*, 8 N. Y. 67, 88.

101. Board of canvassers—Officers' oaths. [Sec. 48, Statutes of 1898.] The inspectors of election shall constitute the board of canvassers of their respective cities, villages, wards or election districts. Previous to receiving any ballot the inspectors, clerks of election and ballot clerks shall severally take an oath or affirmation¹ to support the constitution of the United States, the constitution of the state of Wisconsin, and to perform the duties of inspectors (clerks or ballot clerks, as the case may be) of election according to law, and to studiously endeavor to prevent all fraud, deceit or abuse in conducting the same. Said oath or affirmation shall be in writing, be subscribed by the person taking the same, and annexed to, and returned with, the poll list to the county clerk.

Statute directory. It is held generally that provisions in relation to the oath of the inspectors and clerks are directory, and a failure to take it will not vitiate the election; the fact that they were actually sworn may be shown *aliunde*, the return in the action not being conclusive; *Deshon v. Smith*, 10 Iowa, 212; *People v. Cook*, 8 N. Y. 67; *Stinson v. Sweaney*, 17 Nev. 310; *Barnes v. Adams*, 2 Barb. 764; *Taylor v. Taylor*, 10 Minn. 107; *Keyser v. McKisson*, 2 Rawle, 139; *Weeks Ellis*, 2 Barb. 324; *Greenleaf v. Low*, 4 Denio, 168; *Whipley v. McCane*, 10 Cal. 352; *State v. Canvassers*, 17 Fla. 9; *Heyfron v. Mahoney*, 24 Pac. Rep. 93; *Anderson v. Winfree*, 4 S. W. Rep. 251; *Sanders v. Lacks*, 142 Mo. 255; 43 S. W. Rep. 653; *Smith v. Howell*, 60 N. J. L. 384, 38 Atl. Rep.

¹ FORM OF OATH OF INSPECTORS, CLERKS AND BALLOT CLERKS.

Oath of Inspectors, Clerks or Ballot Clerks.

Of the — of election held in the — of —, county of —, on the — day of —, A. D. 190—.

STATE OF WISCONSIN, } ss.
— County,

I do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of the state of Wisconsin, and will perform the duties of clerk (or inspector or ballot clerk) of election according to law, and will studiously endeavor to prevent all fraud, deceit or abuse in conducting the same, according to the best of my ability.

—, Inspector (Clerk or Ballot Clerk).

Subscribed and sworn to before me, this — day of —, A. D. 190—.
—, Justice of Peace (or Notary Public, etc.).

102. Polls, opening and closing of; change of time. [Sec. 49, Statutes of 1898, as amended by sec. 1, ch. 404, laws of 1901, as amended by ch. 251, laws of 1905, and sec. 3, ch. 424, laws of 1905.] The polls of every election in every city of five thousand inhabitants or over, shall be opened at six o'clock in the morning and closed at seven o'clock in the evening of the same day. The polls of the election held in other cities, and in towns and villages on the Tuesday next succeeding the first Monday in November, shall be open at nine o'clock in the forenoon, or as soon thereafter as may be, and close at five o'clock in the afternoon; provided that the common council of any city containing less than five thousand inhabitants, the town board of any town or the board of trustees of any village, may by resolution adopted and published in some newspaper in such city, town or village, or in case there be no newspaper published therein, then in some newspaper published in the county in which such city, town or village is located, at least ten days before the day of election, fix an earlier hour for the opening of the polls in such city, town or village, not earlier than six o'clock in the forenoon; and that cities of less than five thousand inhabitants and . . . towns and villages in counties of not less than two hundred thousand inhabitants may, by . . . resolution in like manner, fix the time for opening the polls not earlier than six o'clock in the forenoon and for closing not later than seven o'clock in the evening. Inspectors of election shall cause public proclamation to be made of the opening and closing of the polls.

The polls of every election in every city of five thousand (5000) inhabitants and less than one hundred thousand (100,000), shall be opened at six o'clock in the morning and be closed at seven o'clock in the evening of the same day and in cities of one hundred thousand or over the polls shall be opened at six o'clock in the morning and be closed at eight o'clock in the evening of the same day. The polls of the election held in other cities, and in towns and villages on the Tuesday next succeeding the first Monday in November, shall be open at nine o'clock in the forenoon, or as soon thereafter as may be, and close at sun-down, provided that the common council of any city, containing less than five thousand inhabitants, the town board of any town or board of trustees of any village, may by resolution adopted and published in some newspaper in said city, town or village, or in case there be no

newspaper published therein, then in some newspaper published in the county in which such city, town or village is located, at least ten days before the election, fix an earlier hour for the opening of the polls in such city, town or village, not earlier than sunrise; cities of less than five thousand inhabitants, and all towns and villages in counties of not less than two hundred thousand inhabitants may, by such resolution, open the polls not earlier than six o'clock in the morning, and cause them to be kept open not later than seven o'clock in the evening. Inspectors of election shall cause public proclamation to be made at the opening and closing of the polls.

Opening and closing polls. If the result of the election has not been affected by neglect to close the polls at the prescribed time the irregularity will be disregarded: *Holland v. Davies*, 36 Ark. 446 *Knox Co. v. Davies*, 63 Ill. 405; *Locust Ward Election Case*, 3 Penn. L. J. Rep. 11; *Cleland v. Porter*, 74 Ill. 76; *Soper v. Board of Commissioners*, 48 N. W. Rep. 1112. Closing one hour before such time will not avoid the election if it does not appear that voters were thereby deprived of their right: *People v. Cook*, 8 N. Y. 67. But if any elector offers to vote between the time the poll was closed and the time it might have been closed under the law, it seems that it would be otherwise: *Cleland v. Porter*, *supra*. In the *Locust Ward election Case*, *supra*, it is said that when the poll is kept open after the usual hour and the number of votes polled afterwards can be accurately determined, if all of them would not change the result, the election will not be disregarded. But if the duration in the time the polls were open is so considerable as to raise the presumption, in connection with other facts and circumstances, that the result was affected thereby the returns will not be considered: *Penn. District Election*, 2 Pars. Eq. 526; *People v. Seale*, 52 Cal. 71.

Where the polls were opened at the proper time and were closed half an hour later, and the ballots which were cast in the interval were destroyed, and the polls were re-opened at 10 o'clock and finally closed at 4 o'clock, the election was void: *State v. Drake*, 83 Wis. 257.

Where delay in opening the polls precisely at sunrise is not shown to be inconsistent with honest intent, and the violation of the letter of this law did not operate to obstruct the full and fair expression of the voters of the precinct, the fact of such delay will not work a disfranchisement of the precinct. *Parkwood v. Brownell*, 121 Cal. 478.

The delay of less than one hour in opening the polls, caused by the failure of the inspectors to appear, necessitating the election of others, will not avoid the election, it being shown that only one person was prevented from voting by the delay, and it not being shown that his vote would have changed the result. *Pickett v. Russell*, 28 South Rep. 764 (Florida).

103. Duty of ballot clerks. [Sec. 50, Statutes of 1898.] The ballot clerks shall only serve on election day. It shall be their duty to take charge of the official ballots, write their names or initials upon the back of each ballot under the

printed indorsement thereon, fold it in proper manner to be deposited, and deliver to each voter as he enters the booth one ballot duly folded and indorsed. They may, if requested by any voter, instruct him as to the proper manner of marking his ballot, but shall give no advice nor suggestions, nor express any preference, nor make any requests as to the person or ticket the voter shall vote for.

Write their names or initials. The Arkansas statute provides: "Before delivering a ballot to an elector, at least one of the judges shall write his name or initials on the back thereof," and that "no ballot shall be received from any elector or deposited in the ballot box which does not have the name or initials of at least one of the judges indorsed on the back of it." The election judges directed one of their number to write his initials on all ballots; but during the progress of the election the other judges wrote his initials on some of the ballots which were voted. Held, that all ballots on which the initials of a judge's name were not written by his own hand should not be counted. *Rhodes v. Driver*, 64 S. W. Rep. 272.

In an Illinois case a number of ballots were counted which had indorsed thereon only a single initial of one of the election judges. The court said: "The object of requiring one of the judges of election to officially indorse on the back of the ballot his initials before giving it to the voter is to identify the ballot as being one which had been cast at the election. Such identification is as complete from one initial as from all the initials of such judge, and the voter should not be disfranchised by reason of the failure of such judge to literally comply with the statute in that regard." *Perkins v. Bertrand*, 61 N. E. Rep. 405.

Under a statute providing that no judge of election shall deposit any ballot on which the names or initials of the judges do not appear, ballots which bear the name or initials of only one judge cannot be counted. *McKay v. Minner*, 154 Mo. 608.

Provision for initiating directory and not mandatory. The provisions of the general election law which refer to initiating ballots by the election judges are directory and not mandatory; and an elector who receives an uninitiated ballot from the judges and in good faith votes the same, is not disfranchised by reason of the failure of the judges to perform their duty. *Truelson v. Hugo* (Minn.), 91 N. W. 434.

104. Ballot, how marked; use of sample ballot. [Sec. 51, Statutes of 1898, as amended by sec. 4, ch. 349, laws of 1899.] On receiving his ballot the elector shall forthwith, and without leaving the polling place, retire alone to one of the booths or compartments to prepare the same, which shall be done, in the case of a general election, by marking at the head of the ticket he wishes to vote for, or in the space in which appears the name of the person or persons he wishes to vote for, a cross mark, thus X, or, in case of a ballot containing a consti-

tutional amendment or other question submitted to the people, by making in the appropriate margin or place, a cross mark or other symbol, as herein provided, under or against the answer he desires to give as his vote; but in judicial or school elections, he must make such cross mark after the name of each person he desires to vote for. If he wishes to vote for a person for a certain office whose name is not on the ballot, he must write such name in the blank space under the printed name of one of the candidates for that office. An elector may use or copy an unofficial sample ballot which may have been marked in advance of his entering the polling place, but he shall not use or bring into such place any such ballot printed upon paper of the color or quality required to be used for printing official ballots. After preparing his ballot, the elector shall fold it so that its face will be concealed, and so that the printed indorsement and the signatures or initials of the ballot clerks thereon may be seen. He shall then vote forthwith and before leaving the polling place.

Marking ballots elsewhere than in booth. The Missouri statute is like the first sentence of the above section. In a case in which objections were made to the ballots of the officers of election and one other elector on the ground that they prepared them without going into the booths for that purpose, it was said that a wilful disregard of such requirement by the voter should defeat his vote; but the facts did not show wilfulness nor, conclusively, that such ballots were not secretly marked, hence they were counted: *Hall v. Schoenecke*, 31 S. W. Rep. 97.

Rule of construction. Similar provisions have been held mandatory; and the action of the chairman of inspectors in receiving and depositing the ballots of persons who had shown them after they were marked, and in allowing third persons to enter the booths with electors after their ballots were marked, taken in connection with the deposit of ballots of unregistered voters, vitiated the vote of the precinct: *Att'y Gen. v. McQuade*, 94 Mich. 439.

105. Voting party ticket. [Sec. 52, Statutes of 1898, as amended by sec. 5, ch. 349, laws of 1899.] At any election, other than a judicial or school election, any elector may mark a cross as above described in the space under a party designation printed at the head of the ballot. Such ballot so marked shall be counted for all the nominees of the party whose names and designations appear thereon in that column, unless the voter shall have erased some name therein, or marked in the space in which appears the name of another candidate for the same office in some other column, or written in another name, in which case the name written in or so

marked, shall be counted as the one voted for the particular office. Ballots cast at such elections as are excepted from the provisions of this section, must be marked as is required by the provisions of the preceding section.

106. Occupancy of shelf, time for, limited—Spoiled ballots. [Sec. 53, Statutes of 1898.] No more than one person shall be permitted to occupy any shelf or compartment at one time, except when assistance may be required for marking a ballot, and not longer than five minutes, provided the other shelves or compartments are occupied. It shall be the duty of the presiding election officer for the time being to enforce the observance of this provision, and to prevent any person from taking any notice how another person marks his ballot, unless required to assist as provided in section 55.¹ Any voter who shall, by accident or mistake, spoil or erroneously prepare his ballot may, on returning the same, receive another; but not to exceed three in all.

107. Aid in marking ballots; oath may be administered; record to be made. [Sec. 54, Statutes of 1898.] Any voter who declares to the presiding election officer that he is such, that he cannot read or write, or that by physical disability, other than total blindness, he is unable to mark his ballot, shall be informed that he can have the assistance of either of the inspectors, clerks or ballot clerks, or any two of them, if he desires; but in case the voter is totally blind he may be assisted by any person chosen by him from among the legal voters of the county in which the voting precinct is located. The officer or officers or other person selected by any such voter shall retire to the booth or compartment with the elector and shall read to him the names of all the candidates on the ballot for each office, and ask him, "Which one do you vote for?" and the ballot shall be marked according to his expressed preference, and such officer or officers or person selected to assist shall certify on the outside of the ballot that it was marked with his or their assistance, and shall thereafter give no information regarding the same. The presiding officer at the election may, in his discretion, require such declaration of disability to be made by the voter under oath, and may administer such oath. Intoxication shall not be re-

¹ Paragraph 108.

garded as a physical disability, and no intoxicated person shall for that reason be entitled to assistance in marking his ballot. After a ballot has been marked for a voter he shall not show it to any person except that it may be submitted to another election officer, or if by a blind man, to such person as he may select to ascertain if it has been marked as he desired. The clerk shall enter upon the poll list after the name of any elector who had assistance in marking his ballot a memorandum stating that the ballot was marked by an inspector or clerk or by any two of them, or by a person selected by a blind man. The provisions of this section shall apply to the marking of ballots upon which any question is submitted to a vote of the people.

Ballots publicly marked. The election law of Minnesota in force in 1891 provided for booths or compartments, and that voters should retire to them for the purpose of marking their ballots. It did not provide, as does the foregoing section, that the person selected by a voter to assist him should retire to a booth for that purpose. In a case in which assistance was rendered to illiterate and physically disabled voters at the table around which sat the election officers, and in the presence of other electors who were passing in and out of the booth, the court refused to throw out the ballots of the precinct for that reason, there being no evidence of a design that the directions given by the electors should be heard: *State v. Gay*, 60 N. W. Rep. 676.

108. Receipt of ballot at door of polling place. [Sec. 55, Statutes of 1898.] If it shall be announced to the inspectors of any precinct that a voter is at the door who is unable to enter the polling place without assistance, they may, in their discretion, appoint one of their number to take an official ballot and go to the entrance of such place and present it to such physically disabled person, and assist him in marking it, if such person desires him to do so. When the ballot shall have been marked it shall be folded and immediately taken into the polling place, whereupon the inspector shall distinctly announce that he holds in his hand "a ballot offered by _____ (naming the person), a person who is physically disabled from entering the room without assistance." He shall then ask, "Does anyone object to the reception of this ballot?" If no objections are offered the ballot shall be deposited in the box, and a minute shall be made on the poll book by the clerks of election thus: "Ballot received at the door." In case objection is made to the reception of a ballot by any qualified elector present the inspectors shall decide

upon the objection, and if they deem it well founded shall destroy the ballot; otherwise it shall be deposited; if the ballot is destroyed the inspectors shall immediately notify the voter of the fact.

109. Depositing unmarked ballots; such ballots void.
[Sec. 56, Statutes of 1898.] Any person who shall knowingly deposit a ballot in the ballot-box upon which ballot the names or initials of the ballot clerks do not appear shall be punished as provided in section 4635,¹ and in the canvass of the votes any ballot which is not indorsed by the signatures or autograph initials of such clerks shall be void, not counted, and be treated and preserved as a defective ballot; provided, that this section shall not apply to ballots cast by women for school officers.

Indorsement of ballots.² A Minnesota statute provides that two of the judges of opposite political parties shall place their initials on the backs of all the ballots before they are used by voters, and that "no ballot which has not the initials of the two judges of election in said judges' own handwriting on the back thereof" shall be placed in the box. The provision as to the qualifications of the judges was held to be directory the statute is satisfied if the indorsement is made by two judges of the same party: *State v. Gay*, 60 N. W. Rep. 676.

It has been held that a statute requiring clerks to indorse their initials on ballots is mandatory; but a requirement that the indorsement shall be made in a particular place is directory only, and a ballot indorsed elsewhere must be counted. This was held on the theory that the indorsement is required to prevent the counting of fraudulent votes, and that purpose is as well accomplished when it is made on one corner as on another: *Parvin v. Winsberg*, 30 N. E. Rep. 790. See *Horning v. Burgess*, 77 N. W. Rep. 446.

In *State v. Oates*, 86 Wis. 634, some of the ballots cast were indorsed by only one ballot clerk. The court did not find it necessary in determining that case to rule upon the question whether such ballots should be counted. Counsel argued that the statute is directory only; that the neglect of the officer to perform his duty cannot result in the disfranchisement of electors; that the indorsement by one clerk answered the purpose for which the provision was enacted—the identification of the ballot as an official one. If the statute is mandatory, then counsel contended that it was invalid because it disfranchised voters for no fault of theirs. Brief of Orton & Osborn and Wilson & Martin, vol. 457, Cases & Briefs. In *Moyer v. Van de Vanter*, 12 Wash. 377, it was held that a statute declaring ballots void unless indorsed by the initials of one of the election officers is void, because

¹ Paragraph 361.

² See note to paragraph 103.

its effect would be to debar voters of their constitutional right to vote without their fault.

The constitution of Wyoming provides that laws shall be enacted to secure the purity of elections and to guard abuses of the elective franchise, and that "all elections shall be by ballot. The legislature shall provide by law that the names of all candidates for the same office to be voted for at any election shall be printed on the same ballot at public expense, and on election day to be delivered to the voters within the polling place by sworn public officials, and only such ballots so delivered shall be received and counted. All voters shall be guaranteed absolute privacy in the preparation of their ballots, and the secrecy of the ballot shall be made compulsory." A majority of the court of that state has held that a statute requiring both an official stamp and the name or initials of the judge of election to make the ballot valid is in conformity with the constitution. The Wyoming law contains a provision like that in paragraph 104, requiring the voter to fold his ballot so that the face of it will be concealed, and so that the indorsement and signature or initials of the officer thereon may be seen. This provision makes it the duty of the elector to see that his ballot complies with the law; hence he has no cause of complaint if he loses his vote in consequence of his neglect: *Slaymaker v. Phillips*, 40 Pac. Rep. 971. To the same effect is a North Dakota case, *Miller v. Schallern*, 79 N. W. Rep. 865, a Nebraska case, *Orr v. Bailey*, 80 N. W. Rep. 495, and a Michigan case, *DeGaw v. Fitzsimmons*, 83 N. W. Rep. 282.

110. Rules for ascertaining voter's intent in marking ballot.

[Sec. 57, Statutes of 1898, as amended by secs. 6 and 7, of ch. 349, laws of 1899.] All ballots cast at any election shall be counted for the persons for whom they were intended, so far as such intent can be ascertained therefrom. In determining the intent the following rules shall be observed:

First. If the elector shall place on his ballot at a general election, a cross mark or other equivalent mark or symbol under a party designation, at the head of the column, in or near the space indicated for that purpose, he shall be deemed to have voted for all the candidates whose names appear in the column under such mark, unless some name or names shall be erased, or unless in some other column he shall have placed a mark in the space in which appears the name of some other candidate for the same office.

Second. At all elections, whether general or other, when the voter shall place a mark against two or more names for the same office, he shall be deemed to have voted for none of them, and the ballot shall not be counted for either candidate therefor.

Third. If an elector shall mark his ballot with a cross mark, X, or any other mark as,

|, \, v, o, —, /, √, +,

at any place within the space in which the name appears, indicating an intent to mark any such name, it shall be deemed a sufficient vote for the candidate whose name occupies such space.

Fourth. When the elector shall have written the name of a person in the proper place for writing the same he shall be deemed to have voted for that person, although he shall have omitted to erase the name printed in the same column for the same office, or shall have made a mark against the same or against any other name for the same office, or omitted to mark against the name written.

Fifth. A mark made out of its proper place, but on a name or so near it as to indicate that it was intended for that name, shall be deemed a vote for that name; but if the mark is so near a space for marking as to indicate that it was intended for that space, it shall be deemed intended for the name to which such space applies.

Sixth. A ballot put in without any marks shall not be counted, and a ballot not marked at the top shall be counted only for the persons for whom the marks therein are applicable.

Sufficiency of mark. The cases on the question of the sufficiency of the marks on ballots turn upon varying statutes and states of fact. Hence, no attempt will be made to do otherwise than to refer to a limited number of late ones, the examination of which may be helpful. See *Richardson v. Jamison*, 39 Pac. Rep. 1050; *Taylor v. Blakeley*, 39 Pac. Rep. 1045, 28 L. R. A. 683; *Curran v. Clayton*, 29 Atl. Rep. 930; *Ellis v. Glaser*, 102 Mich. 396; *Lay v. Parsons*, 38 Pac. Rep. 447; *Pennington v. Hare*, 62 N. W. Rep. 116.

Where a ballot is marked by a cross at the head of a column and a separate cross is made against the name of a candidate in another column, the ballot is to be counted for such candidate. And so, where the name of the candidate appearing in the column marked by a cross is erased and that of the opposing candidate is written in the space below it, the ballot is to be counted for the latter: *State v. Luy*, 79 N. W. Rep. 776 (Wisconsin Supreme Court, June 22, 1899).

Name written on ballot without erasing printed name. A ballot on which a name has been written opposite a printed name thereon, without erasing the latter, is not void but should be counted in favor of the person whose name is so written: *State ex rel. Blodgett v. Eagen*, 115 Wis. 417.

Surname without given name or initials. A ballot bearing a surname without given name or initials is valid where there is only one candidate of that name for the office: *State ex rel. Blodgett v. Eagen*, 115 Wis. 417.

111. Questions submitted to vote to be certified and notice thereof given. [Sec. 58, Statutes of 1898.] Whenever a proposed constitutional amendment or other question is to be submitted to the electors of the state for a popular vote, the secretary of state, unless otherwise directed by the law providing for such submission, shall, not less than fifteen days before the election at which such question is to be submitted, certify the same to each county clerk, and such clerk shall include the same in the publication provided for in section 36;¹ he shall also prepare and distribute ballots of such form as will enable the electors to vote upon such question in the manner provided in this chapter, unless some other manner be prescribed by law. Such clerks shall also prepare the necessary ballots whenever any question is submitted to the electors of his county pursuant to law, and shall give like notice thereof.

A question submitted by joint resolution of the legislature must be certified: *State v. Dahl*, 68 N. W. Rep. 418.

112. Ballots on city questions. [Sec. 59, Statutes of 1898.] Whenever the common council of any city shall, by ordinance or resolution, submit any question to a vote of the electors, the city clerk shall prepare and distribute ballots in accordance with the last preceding section, or as required by the ordinance or resolution or any statute relating to the subject which is so submitted. When any question is submitted under this or the preceding section and no provision to the contrary is made, the ballot concerning the same may be prepared at the foot of the official ballot; but no such ballot shall be counted on any such question unless a mark is made thereon applicable to it.

113. Correction of errors in ballots. [Sec. 60, Statutes of 1898.] Whenever it shall appear by affidavit that an error or omission has occurred in the publication of the names, description of candidates, or in the printing of the ballots, the circuit court of the proper county, or the presiding judge thereof, may, upon application by an elector, by order, summarily require of the county or city clerk to correct such error, or to show cause why it should not be corrected, and by order cause such correction to be forthwith made after such hearing.

114. Voters' names to be checked—Non-registered elector, how may vote. [Sec. 61, Statutes of 1898.] On election day

¹ See paragraph 65.

the inspectors shall designate two of their number, at the opening of the polls, who shall check the name of every elector voting in such district whose name is on the registry. Any person whose name is not on the registry, but who is a qualified voter therein, shall, nevertheless, be entitled to vote at such election upon compliance with the following provisions, and not otherwise, namely: He shall, at the time he offers his ballot, deliver to the inspectors his affidavit,¹ in which he shall state the facts showing that he has, since the completion of the registry, become a qualified voter of such district, and was not so qualified on the day such registry was completed, and shall deliver therewith the affidavits² of two freeholders, electors in such election district, corroborating all the material statements in his affidavit. And in case any person who was a voter at the last previous general election in any election district in this state shall not be registered, such person shall be entitled to

1 FORM OF AFFIDAVIT OF NON-REGISTERED ELECTOR, WHO BECOMES SUCH AFTER COMPLETION OF THE REGISTRY.

STATE OF WISCONSIN, } ss.
County of _____, }

C _____ D _____, being duly sworn, says that he did not appear before the board of registry of the _____ of _____, on the last day of their meeting for completing the registry of the electors of said election district, for the reason that he was not then a qualified elector in said election district, on account of _____, but that he has, since the said completion of said registry, become a qualified elector of said election district, by reason of _____, and that he now resides at _____.

Subscribed and sworn to before me, this _____ day of _____, 19____.

Justice of the Peace, Notary Public, or Court Commissioner.

2 CORROBORATING AFFIDAVIT OF FREEHOLDER.

STATE OF WISCONSIN, } ss.
County of _____, }

M _____ N _____, being duly sworn, says that he is a freeholder and elector in the _____ of _____ (*here name the election district*); that he resides at _____; that he is personally acquainted with C _____ D _____, whose name appears subscribed to the foregoing affidavit; that he knows of his own knowledge that said C _____ D _____ has resided in this state for one year next preceding this date, and ten days within such election district; that said C _____ D _____ now resides in said election district, at _____; that said C _____ D _____ is a qualified elector of said election district, and that the statements of the said C _____ D _____ in his foregoing affidavit are true.

Subscribed and sworn to before me this _____ day of _____, 19____.

Justice of the Peace, Notary Public, or Court Commissioner.

SAME WITH TWO FREEHOLDERS SIGNING TOGETHER.

STATE OF WISCONSIN, } ss.
County of _____, }

M _____ N _____ and O _____ P _____, being each duly sworn, each on oath, for himself, says that he resides at _____; that he is a freeholder and elector in the _____ of _____ (*here name the election district*), in said county; that he is personally acquainted with C _____ D _____, whose name appears subscribed to the foregoing affidavit; that he knows of his own knowledge that said C _____ D _____ has resided in this state for one year next preceding this date, and ten days within such election district, and now resides and is a qualified elector therein;

vote on making affidavit¹ that he was entitled to vote at such previous general election in the election district where he offers to vote, naming the same, and that he has not become disqualified by reason of removal from such district, or otherwise, since said election, or in case he shall have removed from some other election district into such district, stating the fact of such removal and that he is then a legal voter of the district where he offers to vote;² and in case any person who was

and that the statements of the said C — D — in his foregoing affidavit are true.

Subscribed and sworn to before me this — day of —, 190—.

Justice of the Peace, Notary Public, or Court Commissioner.

FORM OF AFFIDAVIT OF NON-REGISTERED ELECTOR WHO WAS ENTITLED TO VOTE AT LAST GENERAL ELECTION, BUT WAS NOT REGISTERED THEN.

STATE OF WISCONSIN, } ss.
County of —,

E — F —, being duly sworn, says that he was entitled to vote at the last previous general election held in and for — of —, and that he has not become disqualified by reason of removal from said election district or for any other cause, since said election, and that he now resides at —, in said election district.

Subscribed and sworn to before me this — day of —, 190—.

Justice of the Peace, Notary Public, or Court Commissioner.

CORROBORATING AFFIDAVIT OF FREEHOLDER.

STATE OF WISCONSIN, } ss.
County of —,

A — B —, being duly sworn, says that he is a freeholder and elector in the — of —; that he resides at —; that he is personally acquainted with E — F —, whose name appears subscribed to the foregoing affidavit; that he knows of his own knowledge that said E — F — was entitled to vote at the last general election held in and for said election district, and has not become disqualified by reason of removal from said election district, or for any other cause, since said election, and that said E — F — now resides at —, in said election district.

Subscribed and sworn to before me this — day of —, 190—.

Justice of the Peace, Notary Public, or Court Commissioner, etc.

FORM OF AFFIDAVIT OF NON-REGISTERED ELECTOR WHO HAS REMOVED INTO ELECTION DISTRICT.

STATE OF WISCONSIN, } ss.
County of —,

A — B —, being duly sworn, says that he was entitled to vote at the last previous general election, held in and for — of —; that he has removed from said election district; that he is now a legal voter of —, of —, and that he now resides, and has for ten days past resided, at —, in said last named election district.

Subscribed and sworn to before me this — day of November, 190—.

Justice of the Peace, Notary Public, or Court Commissioner.

CORROBORATING AFFIDAVIT OF FREEHOLDER.

STATE OF WISCONSIN, } ss.
County of —,

E — F —, being duly sworn, says that he is a freeholder and elector in the — of —; that he resides at —; that he is personally acquainted with

not a qualified elector at the last previous general election, but has become such by residing in the state for one year, shall not have been registered, he shall be entitled to vote on making affidavit¹ that he is a qualified elector, each of which affidavits shall be substantiated by the affidavits of two freeholders, as is provided for other non-registered voters. No compensation shall be paid or received for taking or certifying any such affidavit. No one freeholder shall be competent to make, at any one election, corroborating affidavits for more than three voters. All such affidavits shall be sworn to before some officer authorized by the laws of this state to administer oaths. The inspectors shall keep a list of the names and residences of the electors voting whose names are not on said completed registry, attach such list to the registry, and return it, together with all such affidavits, to the proper town, city or village clerk.

Affidavit must state facts. An affidavit which recites that the affiant was not, at the completion of the registry, a qualified elector, but has since become such, is not in compliance with the statute, because

A — B —, whose name appears subscribed to the foregoing affidavit; that he knows of his own knowledge that said A — B — was entitled to vote at the last previous general election, held in and for — of —; that said A — B — has removed from said election district, and is now a legal voter of — of —; and resides at — in said election district.

Subscribed and sworn to before me this — day of November, 190—. E — F —
C — D —

Justice of the Peace, Notary Public, or Court Commissioner.

¹AFFIDAVIT OF NON-REGISTERED ELECTOR WHO HAS BECOME SUCH SINCE THE LAST PREVIOUS ELECTION.

STATE OF WISCONSIN, } ss.
County of —.

G — H —, being duly sworn, says, that he was not a qualified elector of the last previous general election held in and for the state of Wisconsin, but has become such by residing in said state for one year last past; that he is now a qualified elector of the — of —, and that he now resides at —, in said election district.

Subscribed and sworn to before me this — day of —, 190—.

Justice of the Peace, Notary Public, or Court Commissioner, etc.

CORROBORATING AFFIDAVIT OF FREEHOLDER.

STATE OF WISCONSIN, } ss.
County of —.

I — J —, being duly sworn, says, that he is a freeholder and elector in the — of —, that he resides at —, that he is personally acquainted with G — H —, whose name appears subscribed to the foregoing affidavit; that he knows of his own knowledge that said G — H — has resided in the state of Wisconsin for one year last past; that said G — H — is now a qualified elector of — of —, and resides at —, in said election district.

Subscribed and sworn to before me this — day of —, 190—.

Justice of the Peace, Notary Public, or Court Commissioner, etc.

it does not state the facts showing his disqualification and the removal of it. The statute must be strictly pursued: *State v. Lloyd*, 77 Wis. 630.

Number of corroborating affidavits by one elector. It has been held under a statute which provides that no one person shall mark ballots for more than three illiterate or physically disabled electors, that, in the absence of a finding that a single one of the electors whose ballots were marked by the same person, subsequent to the first three, had knowledge of the fact that he had previously performed the same service for three or more electors, the provision is not mandatory—all the parties having acted in good faith. It would be otherwise if they had all acted in wilful disregard of the statute: *State v. Gay*, 60 N. W. Rep. 676.

115. Filing and return of poll and registry lists. [Sec. 62, Statutes of 1898.] On the day following the election one of said poll lists and one copy of the registry so kept and checked shall be attached together and filed in the office of the proper town, city or village clerk, and the other of said poll lists and copy of the registry shall, with all convenient dispatch and within two days after the election, be returned to the county clerk with the returns of the election.

116. Ballot boxes, who to provide. [Sec. 63, Statutes of 1898.] There shall be provided and kept by the clerk of each town, city or village, at the expense thereof, suitable ballot-boxes for each poll therein, with a suitable lock and key to each, and there shall be one opening through the lid of each such box of no larger size than shall be sufficient to admit a single closed ballot.

117. Boxes to be locked. [Sec. 64, Statutes of 1898.] The inspectors of election, or one of them, immediately before proclamation is made of the opening of the polls, shall open the ballot-boxes in the presence of the people there assembled, and turn them upside down, so as to empty them of everything that may be in them, and lock them; and they shall not be re-opened, except as hereinafter provided in case of adjournments, until the close of the polls for the purpose of counting the ballots therein.

118. Ballot, how voted. [Sec. 65, Statutes of 1898.] Each elector,¹ having prepared his ballot as hereinbefore provided, shall, publicly at the poll where he offers to vote, deliver in

¹ See foot note to paragraph 75.

person to one of the inspectors a single official ballot, and the inspector receiving the same shall, without opening it or permitting it to be opened or examined, deposit it in the box.

Scope of section. It was said of the corresponding provision in the Revised Statutes of 1878 that it provides no effective procedure to enable women to vote for candidates for school officers who are elected at the same time as other officers; but one class of voters is contemplated—those competent to vote for all officers to be chosen: *Gilkey v. McKinley*, 75 Wis. 543.

Electors' privilege. The privilege of electors of refusing to testify for whom they voted is strictly confined to legal voters and does not extend to one whose vote was received in violation of the registry law: *State v. Hilmantel*, 23 Wis. 422.

Ballots in wrong box; mistake. Ballots deposited in the wrong box by the mere mistake of the voter, or by the mistake or fraud of the inspectors, are still to be counted, if it sufficiently appears from the ballots for whom and for what office they were cast. But ballots thus wrongly cast by the fraud of electors are not to be counted: *People v. Bates*, 11 Mich. 362. See *People v. Cicott*, 16 id. 315, 316. A ballot cast by mistake cannot be withdrawn, nor can the elector vote again by reason thereof: *Harbaugh v. Cicott*, 33 Mich. 241. If a man votes at a precinct in which he is not an elector and subsequently votes at one in which he is, both votes are to be rejected, notwithstanding an arrangement between him and the election officers that the ballot which was cast in the former precinct should not be counted: *Behrensmeyer v. Kreitz*, 135 Ill. 591.

Votes by ballot. See note to paragraph 3.

119. Poll list, how kept; record of sworn voters. [Sec. 66, Statutes of 1898.] Each clerk of election shall keep a poll list on which he shall enter the full name of each person voting at such election in the order in which their ballots are cast; and on request of the inspectors each elector shall state his full name before the ballot shall be received. When any person shall have taken the oath provided in section 61¹ before voting, the clerk shall write at the end of such person's name on the poll list the word "sworn."

120. Elector to give residence; entry on poll lists. [Sec. 67, Statutes of 1898.] At every poll where a registry of electors is required, every elector at the time of offering his ballot shall truly state the street and number of the house or tenement, if numbered, or other location, in which he resides, and the clerks of election shall truly enter in the appropriate column of the

¹ Paragraph 114.

poll lists, opposite his name, the street and number or other location of such house or tenement, or the name of the hotel or boarding house, and if such house or tenement be not numbered the clerks shall enter "not numbered." If any elector offering to vote at any such poll shall refuse to make such statement, his ballot shall not be received. The clerks shall also enter upon the poll lists, opposite the name of every elector so voting whose name was not duly registered, the words "not registered."

Failure to give street and number. If the poll lists do not show the street and number of the voter's residence the presumption is that he gave none. If nothing more appears than the mere fact that the election officers neglected to require voters to comply with the statute, the vote of the precinct cannot be rejected, "for, it is well settled that disregard of directory provisions of election laws, in the absence of actual fraud, is no ground for rejecting the entire vote of a precinct," and these provisions cannot be regarded as other than directory. "But on the other hand, it is equally well settled that neglect of directory provisions of a statute designed to prevent fraudulent voting, followed by actual fraud of that character sufficient in extent to throw doubt on the result of the election, is ground for rejecting the entire vote of a precinct, if there is no means of purging the poll." The failure of election officers to comply with such a statute, if unexplained by them, casts suspicion upon their integrity, and is *prima facie* sufficient to make out a case of fraud: *Russell v. McDowell*, 23 Pac. Rep. 183.

121. Who may challenge person offering to vote; proceedings. [Sec. 68, Statutes of 1898.] Each inspector shall, and any elector may, challenge every person offering to vote whom he shall know or suspect not to be duly qualified as an elector. If such a person is challenged as unqualified, one of the inspectors shall tender to him the following oath or affirmation: You do solemnly swear (or affirm) that you will fully and truly answer all such questions as shall be put to you touching your place of residence and qualifications as an elector of this election; and thereupon put questions as follows:

First. If a person be challenged as unqualified on the ground that he is not a citizen and has not declared his intention to become a citizen:

1. Are you a citizen of the United States? If no, then—
2. Have you declared your intention to become a citizen of the United States conformably to the laws of the United States?
3. When and where did you declare your intention to become a citizen of the United States?

Second. If the person be challenged as unqualified on the ground that he has not resided in this state for one year immediately preceding the election:

1. How long have you resided in this state immediately preceding this election?

2. Have you been absent from this state within the year immediately preceding this election? If yes, then—

3. When you left, did you leave for a temporary purpose, with the design of returning, or for the purpose of remaining away?

4. What state or territory did you regard as your home while absent?

5. Did you, while absent, vote in any other state or territory?

Third. If the person be challenged as unqualified on the ground that he is not a resident of the town, ward or village where he offers his vote:

1. When did you last come into this town, ward or village?

2. Did you come for a temporary purpose merely, or for the purpose of making it your home?

3. Did you come into this town, ward or village for the purpose of voting therein?

4. Are you now and have you been for the last ten days an actual resident of this town, ward or village, and what is the particular description, name and location of your residence?

5. Have you registered to vote at this election at any other place within this state?

Fourth. If the person be challenged as unqualified on the ground that he is not twenty-one years of age: Are you twenty-one years of age to the best of your knowledge and belief?

Fifth. If the person be challenged as unqualified on the ground that he has made or become directly or indirectly interested in any bet or wager depending upon the result of such election:

1. Have you made in any manner any bet or wager depending upon the result of this election, or on the election of any person for whom votes may be cast at this election?

2. Are you in any manner, directly or indirectly, interested in any bet or wager depending in any way whatever upon the result of this election?

Sixth. If the person be challenged as unqualified on the ground that he has been convicted of treason, felony or bribery and not subsequently restored to civil rights:

1. Have you ever been tried or convicted in this state of any crime? If yes—

2. Of what crime, when and in what court were you so convicted?

3. Have you in any manner since such conviction been restored to civil rights, and if yes, how?

Seventh. If the person be challenged as unqualified on the ground that he has been engaged, directly or indirectly, in a duel, either as principal or accessory:

1. Have you ever been engaged in any duel, directly or indirectly, either as principal or as second, or in counseling or aiding either principal or second in a duel? And if yes, then—

2. When and where, and had you before that time been an inhabitant of this state?

Eighth. If the person be challenged as unqualified on the ground that he is a person of Indian descent, a member of an Indian tribe or an uncivilized Indian:

1. Are you a person of Indian descent?

2. Of what tribe or nation are you a descendant?

3. Are you now a member of any Indian tribe?

4. Have you received any annuity from the United States or any agent thereof, or shared in any, and, if so, when did you last so receive or share in any?

The inspectors, or one of them, shall put such other questions to the person challenged as may be necessary to test his qualifications as an elector at such election.

122. Rules for determining residence of voters. [Sec. 69, Statutes of 1898.] In determining the question of residence as a qualification to vote, the following rules so far as applicable, shall govern, and if a person offering to vote be challenged as unqualified on the ground of residence the inspectors shall admonish him of such rules, and put to him such further questions as shall be proper to elicit the facts in respect thereto, namely:

First. As prescribed in the constitution, no person shall be deemed to have lost his residence in this state by reason of his

absence on business of the United States or this state; and no soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this state in consequence of being stationed within the same.

Second. That place shall be considered and held to be the residence of a person in which his habitation is fixed, without any present intention of removing therefrom, and to which, whenever he is absent, he has the intention of returning.

Third. A person shall not be considered or held to have lost his residence who shall leave his home and go into another state or county, town or ward of this state for temporary purposes merely, with an intention of returning.

Fourth. A person shall not be considered to have gained a residence in any town, ward or village of this state into which he shall have come for temporary purposes merely.

Fifth. If a person remove to another state with an intention to make it his permanent residence, he shall be considered and held to have lost his residence in this state.

Sixth. If a person remove to another state with the intention of remaining there for an indefinite time and as a place of present residence, he shall be considered and held to have lost his residence in this state, notwithstanding he may entertain an intention to return at some future period.

Seventh. The place where a married man's family resides shall generally be considered and held to be his residence; but if it is a place of temporary establishment for his family, or for transient objects, it shall be otherwise.

Eighth. If a married man has his family fixed in one place and does his business in another, the former shall be considered and held to be his residence.

Ninth. The mere intention to acquire a new residence, without removal, shall avail nothing; neither shall removal without intention.

Tenth. If a person shall go into another state and while there exercise the right of a citizen by voting, he shall be considered and held to have lost his residence in this state.

Eleventh. No person shall be deemed to have gained a residence in any town, ward or village in this state, so as to entitle

him to vote at any election therein, by remaining in such town, ward or village as a pauper, supported by the town, village or county in which he shall be living at the time of such election; and no person shall be deemed to have lost his residence in any town, ward or village by remaining in any other town, ward or village as such pauper.

Twelfth. If an unmarried person sleeps in one ward and boards in another, the place where he sleeps shall be considered his residence.

Thirteenth. If an unmarried person be employed on a railroad, boat or stage line and boards at different places, if one of those places be with his parents that place shall be considered his residence unless he has, by registering to vote elsewhere or by the performance of some other kindred act, elected some other place as his residence. If he has no parents and has not registered at any other place, he shall be asked: Do you consider this your place of residence, and have you so considered it for the past ten days in preference to any other place? If he answers in the affirmative he shall be entitled to all the privileges and be subject to all of the duties of other citizens in such place in the matter of voting, jury service, poll taxes and assessment for taxes.

Fourteenth. Each inmate of any national or state home for soldiers in this state shall be deemed to reside in the town, city or village in which said home shall be located, and in the election district in which he shall sleep.

123. Ballot of challenged voter to be marked. [Sec. 70, Statutes of 1898.] Whenever the right of any person offering to vote is challenged for any cause recognized by law, if the inspectors shall determine to receive his vote, after the provisions of law are complied with, they shall, before depositing his ballot in the box, write or cause to be written upon the back of such ballot the number of such challenged person upon the tally sheet or voting list kept at such election.

124. Oath to person challenged; when vote to be received. [Sec. 71, Statutes of 1898.] If the person challenged shall refuse to answer fully any questions so as aforesaid put to him the inspectors shall reject his vote. If the challenge be not withdrawn after the person offering to vote shall have an-

swered such questions, one of the inspectors shall then tender to him the following oath or affirmation: You do solemnly swear (or affirm, as the case may be) that you are twenty-one years of age; that you are a citizen of the United States (or that you have declared your intention to become a citizen conformably to the laws of the United States on the subject of naturalization); that you have resided in this state one year next preceding this election; that you are now a resident of this town or ward or village (as the case may be), and have been for the last ten days; that you have not voted at this election, and that you have not made any bet or wager or become directly or indirectly interested in any bet or wager depending upon the result of this election, and that you are not on any other ground disqualified to vote at this election. If the person challenged shall refuse to take such oath or affirmation his vote shall be rejected; but if he shall then take such oath his vote shall be received; provided, that the requirements of law respecting registration, when applicable, have been complied with by such person.

Vote shall be received. If a challenged person takes the oath prescribed and answers the questions put, no matter how false such answers, nor how clearly they show that he is not entitled to vote, the inspectors must then, if he insists upon voting, tender him the oath prescribed in this section, and, if he takes it, receive his vote: *Gillispie v. Palmer*, 20 Wis. 544.

125. What votes to be rejected. [Sec. 72, Statutes of 1898.] The inspectors shall reject the vote of any person under guardianship, non compos mentis or insane.

Non compos mentis. The vote of a man otherwise qualified, who is neither a lunatic nor an idiot, but whose faculties are merely greatly enfeebled by age, ought to be received: *Sinks v. Reese*, 19 Ohio St. 306. Hallucinations which are not shown to extend to political matters, in a person who is capable of doing ordinary work and transacting business, who knows the value of money and makes his own contracts, though he is vacillating and easily persuaded, do not disqualify: *Clark v. Robinson*, 88 Ill. 498.

In the third edition of his work on Elections (sec. 80) Judge McCrary says that the test to be applied in determining mental capacity would "probably be about the same as in cases where the validity of a will is attacked on the ground that the testator was not of sound mind when he executed it." If the voter knew enough to understand the nature of his act—if he understood what he was doing—that is probably sufficient.

Guardianship. If the record of an inquest of lunacy shows that process was not regularly served upon the person for whom it was

sought to have a guardian appointed, and that the hearing was prematurely had, such person may vote, and his vote is entitled to be counted, unless it is shown that he was insane at the time of the election: *Behrensmeyer v. Kreitz*, 135 Ill. 591.

Pauper. A voter's right to exercise his franchise is not forfeited by his becoming a county charge: *Dale v. Irwin*, 78 Ill. 170. Nor does he lose his domicile nor gain a residence by being supported in a place as a pauper therein. Paragraph 122, subd. 11.

126. Officers not to alter ballots, nor disclose how elector voted. [Sec. 73, Statutes of 1898.] No officer of election shall issue, write, change or alter for any person on election day any ballot, and any officer who shall violate any of the foregoing provisions, or mark any ballot, except as provided by law, or disclose how any elector shall have voted, unless required to do so as a witness in a judicial proceeding, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both fine and imprisonment.

127. Proceedings on adjournment of poll. [Sec. 74, Statutes of 1898.] At each adjournment of the poll the clerks shall, in the presence of the inspectors, compare their respective poll lists, compute and set down the number of votes, and correct all mistakes that may be discovered, according to the decision of the inspectors, until such lists shall be made in all respects to correspond. The ballot-box shall then be opened and the poll lists placed therein; and such box shall then be locked, and a covering with a seal placed on the opening in the lid of such box so as to entirely cover the same, and the key delivered to one inspector and the box to another, to be designated by the inspectors. The inspector having the key shall keep it in his own possession, and deliver it again to the inspectors at the next opening of the poll; and the inspector having the box shall carefully keep it without opening it or suffering it to be opened or the seal thereof to be broken or removed, and shall publicly deliver it to the inspectors at the next opening of the poll, when the seal shall be broken and the box opened, and the poll lists taken out and the box again locked.

Sealing boxes. If it is shown that the box has been kept undisturbed and inviolate, the fact that it was not sealed does not render the ballots inadmissible as evidence, though the burden of proving that it has been so kept is upon the party who alleges it: *People v. Livingston*, 79 N. Y. 279; *O'Gorman v. Richter*, 31 Minn. 25.

128. Inspectors may preserve order. [Sec. 75, Statutes of 1898.] The inspectors shall possess full authority to maintain order and to enforce obedience to their lawful commands during an election and during the canvass of votes. If any person shall refuse to obey their lawful commands or by disorderly conduct in their presence or hearing interrupt or disturb their proceedings, they may order¹ any constable or other person to take him into custody during the election.

CANVASS OF VOTES AND DELIVERY OF RETURNS.

129. Canvass, when and how made. [Sec. 76, Statutes of 1898.] As soon as the poll of the election shall be finally closed the inspectors shall proceed immediately to canvass publicly, in the presence of all persons desiring to attend the same, the votes received at such poll, and continue without adjournment until the canvass is completed and the statements herein-after required are made. They shall commence by a comparison of the poll lists and the correction of any mistakes therein, until they shall be found or made to agree. The box shall then be opened and the ballots therein taken out and counted by the inspectors, unopened, except so far as to ascertain whether each ballot is single; and if two or more ballots be found so folded together as to present the appearance of a single ballot, they shall be laid aside until the count of the ballots is completed; and if, upon a comparison of the count and the appearance of such ballots, a majority of the inspectors shall be of the opinion that the ballots thus folded together were voted by one elector they shall be destroyed. If the ballots in the box shall be found to exceed in number, after any such ballots folded together are destroyed, the whole number

FORM OF ORDER OR PRECEPT.

COUNTY OF —, } ss.

Town of —,

The State of Wisconsin to any constable of the county of — (or to C. D.): Whereas, at the present election in the town of —, in said county, G. H. does refuse to obey the lawful commands of the undersigned, inspectors of said election, the said commands being (*here set out the same — or*) G. H. in the presence (*or, in the hearing*) of the undersigned, inspectors of such election, does, by disorderly conduct, to-wit: by (loud noises *or by commencing an affray with divers persons, etc., as the case may be*), interrupt or disturb the proceedings of the said inspectors, in conducting such election. You are, therefore, hereby ordered forthwith to arrest the said G. H. and him safely take into custody during this election.

Given under our hands this — day of —, 190—.

I — J —,
K — L —,
M — N —.

Inspectors of Election.

of votes shown by the poll lists, they shall be replaced in the box, and one of the inspectors shall publicly draw therefrom by chance, and without examination thereof, and destroy so many ballots unopened as shall be equal to such excess. The number of ballots agreeing, or so as aforesaid being made to agree, with the poll lists, the inspectors shall then proceed to open and count and ascertain the number of votes.¹

Shall proceed immediately. It has been said by the Michigan court that the object of the requirement to proceed with the canvass immediately on closing the polls is to prevent any fraudulent interference with the ballots before the counting. The direction is positive and mandatory. The count must be in public, the result publicly and officially declared, and the ballots sealed up before the inspectors have any right to adjourn. Such statement and declaration then made are official and *prima facie* evidence of the result of the election; but a canvass or any statement or declaration made by the inspectors at any other time, or any subsequent recounting, and any statement or declaration made thereon, would be unofficial and without any force or effect: *People v. Sackett*, 14 Mich. 320; *Keeler v. Robertson*, 27 id. 116.

A later case appears to apply a less strict rule. The statute provided that "immediately on closing the polls the board shall proceed to canvass the votes;" and in another section that, "after the count of the tickets or ballots has been completed, the result shall be immediately publicly declared." The canvass was not in fact completed on the night following the election, and the returns bore date the next day. The court said: "We do not think the delay in canvassing the vote should result in disfranchisement of the voters. It would be a dangerous rule to establish that the board of election inspectors could thwart the will of the voters by a neglect to perform the duty imposed upon them by statute, except where the plain provisions of the statute require it:" *Ellis v. Glaser*, 61 N. W. Rep. 648.

¹ Such as are called regular tickets are usually first separated from the irregular, scratched or altered ones; each kind placed by itself and counted and the number received of each person for the same office set down opposite his name upon a tally sheet *previously prepared*, thus:

FOR GOVERNOR.

[Sample Tally Sheet.]

Q. R.....	80		= 20.....	100
S. T.....	50		= 15.....	65
Whole number for Governor.....				165

FOR LIEUTENANT GOVERNOR.

U. V.....	72		= 18.....	90
W. X.....	53		= 15.....	73
Whole number for Lieutenant governor.....				163

Ballots folded together. Repetition of name of candidate and office on a single ballot is not a "folding together" and good: *State v. Pierce*, 35 Wis. 93. If two or more ballots are so folded together as to present the appearance of but one, both must be destroyed, thus depriving the person casting them of his vote, whether so folded by mistake or intentionally: *State v. Meilike*, 81 Wis. 574. It has been held in New Jersey under a statute which requires that ballots be inclosed in an envelope, and provides that if, in counting the votes, more than one ballot shall be found in any envelope, none of the ballots so found shall be counted for any candidate, that it makes no difference that all the ballots inclosed show only one vote for each office named thereon: *State v. Chandless*, 29 Atl. Rep. 322.

Public canvass. The exclusion of the public while the canvass was being made, in connection with other irregularities, is spoken of by the supreme court of this state as raising the inference of unfairness, if not fraud. See note to paragraph 100.

130. Announcement and return of the result. [Sec. 77, Statutes of 1898.] The canvass being completed, the inspectors shall then publicly announce¹ the result thereof, specifying the whole number of votes cast for each office and each person to fill the same respectively, and for and against each proposition voted for, and immediately draw up a statement in writing thereof² in duplicate, setting forth therein, in words at

¹FORM OF PROCLAMATION OF RESULT.

Hear ye! hear ye! hear ye! The whole number of votes given for the office of _____, found in the box just canvassed was _____; of which number _____ received _____, and _____ received _____, for said office (and so on in the same manner, with all the officers voted for at such election); also (give the number of votes given for and against each proposition voted on).

²FORM OF STATEMENT OF CANVASS.

Statement of the result of a general election held in and for the town of (or village) of _____ (or _____ election district of the town, village or ward of, or of the _____ ward of the city of _____), in the county of _____ on the _____ day of November, in the year 190____, made by the inspectors of election in and for said town (or village or election district or ward, to-wit):

The whole number of votes given for the office of governor was _____ of which _____ received _____, and _____ received _____ (and in like manner for each officer voted for at such election, and the number of votes given for and against each proposition voted on).

We certify that the foregoing statement is correct in all respects.

Dated November _____, 190____.

_____,
_____,
_____,
Inspectors.

STATE OF WISCONSIN, }
County of _____, } ss.

We, _____ and _____, do hereby certify that we were inspectors of election in and for the _____ precinct (or the _____ ward of the city of _____, or the village of _____) in the _____ of _____ in the county of _____ and state of Wisconsin, held thereat on the _____ day of _____, A. D. 190____. That we are respectively members of the _____ and _____ parties, the two political parties which cast the largest vote in the said precinct or polling place at the latest preceding general election. That _____ and _____, two inspectors representing each of the two political parties which cast the largest vote at the last preceding general election in the said precinct or polling place have separately canvassed all the ballots cast at said election in said precinct or polling place,

length and in figures, the whole number of votes given for each office at such election, the names of all the persons for whom votes were given, as shown upon the ballots, the number of votes so given for each person, and the number of votes given for and against each proposition voted for, if any, at such election, which statements they shall certify to be correct and subscribe with their names.

Subscribe their names. The signature of a majority of the inspectors are enough: *Opinion of Justices*, 70 Me. 562. See sec. 4971, Statutes 1898, subd. 3.

Mandamus will issue to compel inspectors to count and return all the votes cast, notwithstanding the claim on their part that fraudulent votes were polled by persons who were not registered, but who falsely personated registered voters, such persons having, on being challenged, complied with the statutory conditions: *People v. Bell*, 119 N. Y. 175.

Informalities. Neglect to fill blanks in headings of poll book or in certificate intended to show the number of electors who voted is not material: *State v. Sellon*, 24 Kan. 13. Neither is neglect to seal the poll list if it does not appear to have been tampered with: *Patton v. Coates*, 41 Ark. 111. Or to sign the statement showing the result of the election; this may be done at any time before the canvass is completed: *People v. Nordheim*, 99 Ill. 553.

Mere matters of form as to stating the result will be disregarded: *Pruebt v. Stevens*, 25 Kan. 275; *Bisbee v. Board*, 17 Fla. 1; *People v. Rugle*, 91 Ill. 525; *State v. Berg*, 76 Mo. 136.

In words and figures. See note to paragraph 136.

131. Delivery of statements and poll lists; compensation for making. [Sec. 78, Statutes of 1898, as amended by sec. 1, ch. 148, laws of 1901.] The chairman of the inspectors or one of them appointed by him shall forthwith deliver to the clerk of the town, city or village one of said statements and poll lists, to be filed and preserved in his office, and shall, with all convenient dispatch and within two days after the election, deliver to the county clerk or send by registered letter from the nearest postoffice, the other statement and poll list to the

and we hereby severally certify that the canvass thereof was duly and legally made and that the result of said canvass is correctly set forth in the within statement to which our names are subscribed.

Dated _____,

_____,
_____,

Inspectors of Election.

[In the statement of the result, canvassers should not insert the word "scattering," but should return the name of each person voted for, though he may have received no more than one vote.]

county clerk, they having been by the inspectors carefully sealed up, with the oaths of the inspectors and clerks affixed, in an envelope properly directed to such clerk. The person delivering or sending such returns shall receive as compensation therefor, fifty cents, together with postage and registration fees paid by him, to be paid out of the town, city or village treasury.

Delivery of poll lists and oaths. If the poll lists and oaths are not returned with the statement of votes the town clerk is competent to show by the records in his office that the election was regularly noticed and conducted and the canvass duly made. The chairman of the board may testify that he acted as an inspector and that the inspectors were duly sworn: Att'y Gen. v. Ely, 4 Wis. 420.

132. Neglect to deliver, penalty. [Sec. 79, Statutes of 1898, as amended by sec. 2, ch. 148, laws of 1901.] If the person to whom such returns are delivered shall fail or neglect to send or deliver them to the county clerk within such time, he shall be liable for all expenses incurred in procuring such returns by special messenger or otherwise, and shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not more than twenty days or by both such fine and imprisonment.

133. Defective ballots; preservation of ballots; destruction of after a certain time. [Sec. 80, Statutes of 1898, as amended by ch. 287, laws of 1905.] If any of the ballots cast at any election are found to be so defective that the inspectors cannot determine with reasonable certainty for whom they were cast, and if any were cast by any person who shall have been challenged, and if any shall be decided by a majority of the inspectors to be or not to be defective, the inspectors shall make a statement¹ in writing, in duplicate, certified to be correct and signed by them, of the contents of each of such

¹FORM OF STATEMENT OF DEFECTIVE BALLOT.

At a general (or, special) election held at (*give election district*) on the ____ day of ____, 190__, the undersigned inspectors of such election determined that the following ballots were so defective that the same should not be canvassed in whole or in part, to-wit:

(*Here give the contents of each ballot, stating whether excluded wholly from the canvass, or only in part, and if the latter, stating what part was canvassed and what part was not canvassed.*)

We hereby certify that the foregoing statement is in all respects correct.

Dated ____.

Inspectors.

[The above must be in duplicate.]

ballots, attach such statement to the statements of the canvass and carefully seal up in an envelope all such ballots, and deliver the same as hereinafter provided. No ballot shall be regarded as defective by reason of the misspelling of a candidate's name, or by abbreviation, addition, omission or use of the wrong initial of such name, but every ballot shall be counted for the candidate for whom it was evidently intended, if the intention of the voter can be clearly ascertained from the ballot itself. Before separating, the inspectors shall fold in two folds and string closely upon a single piece of flexible wire, all ballots which shall have been counted by them, except those marked "objected to," unite the ends of such wire in a firm knot, seal the knot in such manner that it cannot be untied without breaking the seal, enclose the ballots so strung in a secure canvas covering and securely tie and seal such canvas covering with official wax impression seals, to be provided, by the inspectors in such manner that it cannot be opened without breaking the seals, and return said ballots, together with the package containing the ballots marked "defective or objected to" in such sealed canvas covering to the county clerk, and such officer shall carefully preserve said ballots for sixty days, and at the expiration of that time shall destroy them by burning without previously opening the package. Such ballots shall be destroyed in the presence of the official custodian thereof and two electors of approved integrity and good reputation and members respectively of the two leading political parties. The said electors shall be designated by the county judge of the county in which such ballots are kept: Provided, that if any contest of the election of any officer voted for at such election shall be pending at the expiration of said time, the said ballots shall not be destroyed until such contest is finally determined. In all cases of contested elections the parties contesting the same shall have the right to have said ballots opened and to have all errors of the inspectors in counting or refusing to count any ballot corrected by the court or body trying such contest, but such ballots shall be opened only in open court or in open session of such body and in the presence of the officer having the custody thereof.

Ballots as evidence. The identical ballots cast by the voters are better evidence of the result of an election than the returns thereof. The person who claims any advantage from the ballots over the re-

turns must establish that the ballots are the ones actually voted. Statutes providing how ballots shall be kept are directory merely, and if they have been safely kept and not tampered with the end desired is attained, and they are admissible in evidence, although the directions of the law have not been fully complied with: *Hartman v. Young*, 17 Oreg. 151, 11 Am. St. Rep. 787. See note to Sec. 40, Ann. Stats., and *State v. Bate*, 70 Wis. 409, 413, where it is observed that the ballots had "been unlawfully examined and intermeddled with by those who had no such right, and their identity and authentication destroyed, and they are no longer legal evidence for any purpose." If ballots have been so carelessly cared for as readily to afford frequent or continued opportunity to interested parties, or the friends of interested parties, to tamper with them, or alter them, or add to or take from their number, unless all reasonable doubts as to their integrity are removed by an affirmative showing, the ballots are not entitled to be resorted to for the purpose of determining the state of the vote: *Newton v. Newell*, 26 Minn. 529; *O'Gorman v. Richter*, 31 id. 31.

If steps have not been taken for a recount of the ballots and the time fixed for burning them has expired, they have no legal existence and are not receivable in evidence to determine the title to an office: *State v. Bate*, 70 Wis. 409.

It is presumed that officers charged with the duty of preserving ballots have performed it; hence a pleading is not demurrable because that fact is not alleged: *State v. Kempf*, 69 Wis. 470.

Defective ballots. A ballot which contains the names of two persons for an office for which only one is to be elected is void as to that office and should not be counted for either of such persons; but it is good as to the candidates named thereon for other offices: *Carpenter v. Ely*, 4 Wis. 420; *State v. Tierney*, 23 id. 430.

"Ballot good if intention of voter shown thereby, though not entirely formal:" *Spalding v. Elwood*, 12 Wis. 551.

Where the name is misspelled, as *Jacob* for *Jacob*, *Jonson* for *Johnson*, but so that the pronunciation is not varied, the ballot should be counted as if spelled aright. Where there is a change, or the omission or addition of a middle letter to the name, the vote, if regular in other respects, should be counted. See *Behrensmeyer v. Kretz*, 135 Ill. 591.

Ineligible candidates. Where a candidate for an office at an election is ineligible the votes cast for him are not void, but must be counted by the canvassers; and if he receive the highest number of votes the person receiving the next highest number will not thereby be elected: *State v. Smith*, 14 Wis. 497; *State v. Tierney*, 23 id. 430; *State v. Giles*, 2 Pin. 166.

Parol evidence as to ballots. In *State v. Luy*, 79 N. W. Rep. 776 (decided by the supreme court of Wisconsin June 22, 1899) the defective ballots, instead of being sealed up, were simply tied together and put into the ballot box with the returns and all other ballots; the box was locked and allowed to remain in the town hall a week or more. The trial court found that the ballots had not been tampered

with, and received them in evidence. The court also received parol evidence as to the contents of two ballots which were not preserved and which had not been counted for either candidate. It was held right to rectify any omissions or mistakes of the canvassing board and give effect to the voters' will; that the terms of the ballots were to be ascertained from the evidence, and that the contents of missing ballots might be shown by parol.

COUNTY CANVASS.

134. Board of canvassers, when and how to be organized. [Sec. 81, Statutes of 1898.] On the Tuesday next succeeding the election, or at any time sooner if all the returns are sooner received, the county clerk shall take to his assistance from among the following named officers of the county, to-wit: the county judge, register of deeds, members of the county board or justice of the peace, two associate canvassers, one of whom shall not be of the same political party as such clerk and who shall constitute with such clerk a board of county canvassers; and in case all the above-named officers should belong to the same political party, then said clerk shall elect from the opposite political party some reputable citizen and elector to act as the third member of said board. In case of vacancy in the office of the county clerk, or when from absence, sickness or other inability such clerk cannot perform the duties enjoined upon him, the clerk of the circuit court, or if there be no such clerk, or he be unable to perform such duties, then the chairman of the county board shall perform the duties required of the county clerk by this and the following sections and be subject to the same punishment for violation thereof.

135. Adjournment, cause for—Missing or defective returns. [Sec. 82, Statutes of 1898.] If on the day appointed for the county canvass there shall fail to be an attendance of three canvassers, the clerk shall procure a full attendance of such canvassers, and may therefor adjourn the canvass one day, when the canvass shall proceed. On the assembling of the board they shall open and examine the returns, and if from any town, ward, election district or poll of the county no returns shall have been received, they shall forthwith dispatch a messenger therefor, and the person having them in charge shall deliver such returns to said messenger; and if, on examination of any returns received, they shall be found

so informal or incomplete that the board cannot intelligently canvass them, they shall dispatch a messenger with such returns to the inspectors who made them with a written specification¹ of the informalities or defects, and command them to forthwith complete the same in the manner required by law and deliver them to said messenger, which such inspectors shall do. Every such messenger shall safely keep all such returns, exhibit them to no person except the inspectors, and deliver them to the county clerk with all convenient dispatch. For such purposes the board may adjourn as may be necessary, not more than four days at one time nor more than eight days in all.

Duty of canvassers. It is the duty of board to send for corrected returns when canvass impossible from incomplete returns: *State v. State Canvassers*, 36 Wis. 498; *State v. Baker*, 38 id. 71. Same point and also duty of county clerk: *State v. Pierpont*, 29 Wis. 608.

The board of canvassers has no right to refuse to perform its statutory duty because some of the persons voted for were not properly nominated: *Chamberlain v. Hedyer*, 80 N. W. Rep. 178.

136. Returns by county canvassers, how made. [Sec. 83, Statutes of 1898.] The returns having been obtained as hereinbefore provided, the board shall proceed thereupon to make out a separate statement, written in words at length, containing the whole number of votes given in such county for each state officer voted for and for representative in congress, the names as returned of all the persons to whom such votes were given and the number of votes given to each; another similar statement of the votes given for electors of president and vice-president; another of the votes given for senator, when the county alone does not constitute a senate district; another of the votes given for member of assembly, when the county alone does not constitute an assembly district; another of the votes given for county officers, and another of the votes given

***FORM OF SPECIFICATION BY COUNTY CANVASSERS OF DEFECTS IN RETURNS, AND MANDATE TO CORRECT THEM.**

To the Inspectors of Election of ———:

The undersigned board of county canvassers of the county of ———, having found the election returns made by you so informal or incomplete that the board cannot intelligently canvass them, herewith hand them to you by ———, our messenger. The said returns are informal and (or) defective in the following particulars (*specify informalities or defects*).

And we hereby command you to forthwith complete the same in the manner required by law, and deliver them to said messenger.

Board of County Canvassers.

Dated — at —, this — day of —, 190—,

for senators and members of the assembly, when the county constitutes one or more senate or assembly districts, specifying the number of votes for each person for senator and member of assembly in each such district respectively. They shall append to each such statement as part thereof a succinct tabular exhibit, in figures, of the votes cast at each election poll in the county for each office and person entering into the canvass embraced in such statement, whether canvassed or not, and if any votes were rejected shall specify the reasons therefor. Each statement shall be certified as correct and attested by the signatures of said canvassers, and filed and recorded in the office of the county clerk.¹

Written in words. The failure to write out in words the number of votes given for and against the adoption of a constitutional amendment, and the use of numerals instead of words, does not justify the board of state canvassers in excluding the returns from a county. The provision is, however, mandatory so far as the canvassing officers are concerned, and neglect to comply with it subjects them to the statutory penalty: *Rich v. Board of State Canvassers*, 100 Mich. 453.

Authority of canvassers. The board has no authority to examine the certificates of nomination of any candidate and determine whether the law relating thereto has been complied with: *Pigott v. Board of County Canvassers*, 31 Pac. Rep. 536. Duties of such board are in the main ministerial: *Att'y Gen. v. Ely*, 4 Wis., 420-427.

137. Determination and publication of the result. [Sec. 84, Statutes of 1898.] They shall then determine the persons who have been, by the greatest number of votes, elected to the several county offices and members of the senate and assembly, when the county constitutes one of more senate or assembly districts, and such determination shall be reduced to writing, certified as correct and attested by their signatures, and be annexed to the statement of votes given for such offices respectively, and filed and recorded with the same.² Such

¹The secretary of state furnishes the blanks necessary under this section; the forms thereof are not here given.

***FORM OF CERTIFICATE OF DETERMINATION OF PERSONS ELECTED.**

STATE OF WISCONSIN, } ss.
County of _____, }

We, _____, county clerk, _____, giving official title, and _____, giving official title, in and for said county, constituting the board of county canvassers for said county, do hereby certify that we have determined that the within named _____ is duly elected to the office of _____ and that _____ is duly elected to the office of _____ (continuing according to the facts).

Given under our hands at the office of the county clerk at _____, this _____ day of _____, 190—.

County Clerk.

Board of County Canvassers

statement and determination shall be published in such newspapers of the county as the canvassers may designate, to be paid for by the county.

Certificate of canvassers. Court and jury may go behind it to determine who has plurality: *Att'y Gen. v. Barstow*, 4 Wis. 567; *State v. Pierpont*, 29 id. 608; *State v. Avery*, 14 id. 122; *Att'y Gen. v. Ely*, 4 id. 420; *State v. Meilike* 81, id. 574.

138. Certificate of election. [Sec. 85, Statutes of 1898, as amended by sec. 1, ch. 3, laws of 1899.] The county clerk shall immediately make out, in pursuance of the determination of such board, a certificate of election¹ for each person having the greatest number of votes for any county office, or for member of the senate or assembly when the county constitutes one or more senate or assembly districts, and deliver the same personally to such person, which notice shall also state the amount of the official bond, if any, required to be given by such person. Such personal service of such notice shall be deemed for all statutory and legal purposes official notification to such person of his election to such office.

Effect of certificate. The canvass and the certificate of election determine the right to the office for the time being and until a different result is reached in a proper proceeding to contest the title of the certificate holder thereto. "As against any intruder in the office, and in fact as against all the world except a *de facto* officer in possession of the office under color of authority, the fact is settled by the determination of the canvassers until in a proper proceeding that determination is reversed." An officer who remains in possession of his office after the expiration of his term claiming that he was re-elected, is not an officer *de facto* as against the certificate holder: *State v. Oates*, 6 Wis. 634.

139. Duplicate statement, when required. [Sec. 86, Statutes of 1898.] The said board shall, without delay, make duplicates of the statement of the votes given for senator, when the county alone does not constitute a senate district,

¹FORM OF CERTIFICATE OF ELECTION.

STATE OF WISCONSIN, } ss.
County of _____, }

I, _____, county clerk of said county, do hereby certify, that at the general election held in the several towns (villages and wards, if there is a village or city in the county), in said county on the _____ day of November, 190____, A____ B____ was by the greatest number of votes elected a state senator (or member of assembly or sheriff, or any other officer as the case may be), for said county of _____. [If the officer is required to give a bond add a statement of the amount thereof as fixed by law, or by the action of the county board.]

Given under my hand and official seal at _____, this _____ day of _____, 190____,
[OFFICIAL SEAL.] _____, County Clerk.

and deliver the same to the county clerk, who shall deliver it to the senatorial district canvassers; said board shall also make a duplicate of the statement of the votes given for member of assembly, when the county alone does not constitute an assembly district, and deliver the same to said clerk, who shall deliver it to the assembly district canvassers.

BY THE . . .

140. Same, and duplicate certificate. [Sec. 87, Statutes of 1898.] Of the statement and certificate of votes given for each state officer and for representative in congress, and also of the statement and certificate of votes given for electors of president and vice-president, the county clerk shall forthwith make three copies, certified under his hand and the seal of the county, and send by mail one such copy of each to the governor, the secretary of state and the state treasurer. He shall also transmit by mail to the secretary of state, within thirty days after any general election, a list of the names of persons elected in the county as members of the senate and assembly, and also the names of all the county officers elected in any such county at such election.¹

Refusal of county clerk to act. In New York the county clerk is not a member of the board of county canvassers, but it is merely *ex-officio* secretary thereof, and as such is charged with duties similar to those imposed by this section. His authority is purely ministerial;

**FORM OF STATEMENT TO BE TRANSMITTED BY THE COUNTY CLERK
TO THE SECRETARY OF STATE.**

To the Secretary of State:

Statement of the members of the legislature and county officers elected in the county of —, state of Wisconsin, at the general election held on Tuesday next succeeding the first Monday, being the — day of November, A. D. 190—.

STATE SENATOR.

Senate district, No. Comprising
Name of senator Politics
Residence P. O. Address

MEMBERS OF ASSEMBLY.

Assembly district, No. Comprising
Name of member Politics
Residence P. O. Address

COUNTY OFFICERS.

Sheriff —, —,
Treasurer —, —,
(Give the offices and names of persons elected to fill the same.)

STATE OF WISCONSIN, } ss.
County of —, }

I, —, —, county clerk of said county, do hereby certify that the foregoing statement is correct.

Given under my hand and the official seal at —, this — day of —, 190—.

[OFFICIAL SEAL.]

—, —, County Clerk.

he cannot refuse to certify as correct and attest by his signature a statement made by the board of the result of an election because he is of opinion that it does not give the correct legal result. If he refuses to so do the board may choose one of its members as secretary *pro tem.* to make the required certificate, attest its correctness, and transmit certified copies of it to the proper officers. The remedy by *mandamus* is not exclusive: *People v. Rice*, 129 N. Y. 449.

141. Canvass and return of other votes. [Sec. 88, Statutes of 1898.] Whenever any amendment shall have been submitted to the people, or any other question or proposition shall be submitted by the legislature to a vote of the people, if the vote thereon shall be required to be taken at a general election, the votes cast for and against such amendment, question or proposition shall be taken, canvassed, certified and recorded, and certified copies of the statement thereof shall be made and transmitted by each county clerk to the governor, secretary of state and treasurer at the time and in the manner the votes for state officers are to be taken, canvassed, certified and recorded and statements thereof are to be certified and transmitted.

DISTRICT CANVASS.

142. Board of canvassers, how constituted. [Sec. 89, Statutes of 1898.] In each senate and assembly district the limits of which shall be greater than those of a county or which may embrace a portion of two or more counties, there shall be a board of district canvassers, and the county clerks of the several counties whereof a portion or the whole is within the district, and the chairman of the county board of the county where the meetings of the board are to be held, shall constitute such board. Any three of such canvassers shall be a quorum for the transaction of business, and in case there shall not be three members of such board present the county judge or register of deeds of the county where any such meeting is to be held, or both of them, may act as members thereof, so as to constitute a board of not less than three in number.

143. Time and place of meeting. [Sec. 90, Statutes of 1898.] The board shall meet in each such assembly district on the second Tuesday and in each such senate district on the third Tuesday next after the day on which the county canvass is required to be made, at the office of the county clerk

of the county containing the most populous portion of such senate or assembly district according to the last preceding census.

144. Duty of absent county clerk; missing or informal statements; adjournment. [Sec. 91, Statutes of 1898.] If any of the county clerks shall be unable to attend such canvass on the day appointed therefor, he shall, on or before that day, cause to be delivered, at the office of the county clerk of the county in which such meeting is to be held, the duplicate statement of votes given in his county for the officer to be elected in such district, which statement shall be laid before said board. If on the assembling of the board any such statement shall not be present, or if on examination of any such statement received it shall appear that any material mistake has occurred therein, or that the vote of any poll or any part thereof in such district has not been counted by the county canvassers, the board shall dispatch a messenger to obtain such absent statement, or with a requirement in writing to the county clerk of the county from which such erroneous statement was received to certify the facts in respect to such supposed mistake, or the reasons why the vote of such poll was not counted; and the person having such absent statement shall deliver the same to such messenger, and the county clerk to whom any such requirement is delivered shall forthwith make true and full answer to the same, under his hand and the seal of the county, and deliver the same to such messenger. For such purpose the board may adjourn as may be necessary not more than one week in all.

145. Statement of result and certificate of election. [Sec. 92, Statutes of 1898.] So soon as they shall have the completed statement of such district as hereinbefore provided, the board shall make a canvass of the same, and draw up a statement thereof in words at length, which shall contain the whole number of votes given, the names of all the candidates, the whole number of votes given to each, and the determination of the board what person has been elected in such district, as appears from such statements and returns to them, which statement shall be certified to be correct over the signatures of such canvassers, and be forthwith delivered to the county clerk of the county in which their meeting shall be held, who shall file and record the same in his office. Such clerk shall forthwith transmit by mail to the secretary of state

the name of the person so elected,¹ and make out and transmit to such person a certificate of his election.²

STATE CANVASS.

146. Board of canvassers; disqualification; compensation of person appointed. [Sec. 93, Statutes of 1898.] The secretary of state, treasurer and attorney-general shall constitute the board of state canvassers, two of whom shall be a quorum for the transaction of business, and, if one only of said officers attend on the day appointed for a meeting of such board, the clerk of the supreme court, on being notified by the officer so attending, shall attend without delay with such officer and with him shall form the board. When a member of said board is a candidate for an office as to which the votes are to be canvassed by him, the chief justice, upon the request of any opposing candidate, shall designate some other state officer, or a judge of the circuit court, who shall act in his stead at the session of the board at which the votes given for such member are to be canvassed. Whenever the chief justice shall designate any state officer or judge to act as one of the board of state canvassers as provided herein, such officer or judge shall be entitled to receive a compensation for attendance and services as a member of said board not exceeding fifteen dollars per day for each day he shall be absent from his place of residence and engaged in such service and attendance, and the secretary of state shall audit his account for such service and attendance and draw a warrant on the state treasurer for payment thereof.

Delegation of duty. The duties of the state board cannot be delegated: Att'y Gen. v. Joachim, 99 Mich. 358.

¹FORM OF CERTIFICATE OF ELECTION OF MEMBERS OF SENATE OR ASSEMBLY WHERE DISTRICT IS COMPOSED OF MORE THAN ONE COUNTY.

STATE OF WISCONSIN,
Senate district (or Assembly district), comprising } ss.
the counties of —, —, —.

To the Secretary of State:

I, —, county clerk of — county, do hereby certify that, at the general election held on the — day of November, 190—, in the several towns, wards and election districts in the above named counties, constituting the said senate (or assembly) district, A— B— was by the greatest number of votes duly elected senator (or member of assembly) for said district, as appears from the certified statement of the board of district canvassers on file in my office.

Given under my hand and official seal at —, this — day of —, 190—,
[OFFICIAL SEAL.] —, County Clerk.

²The form of certificate given under paragraph 138 may be readily adapted to this section.

147. Returns to be recorded; missing returns to be sent for. [Sec. 94, Statutes of 1898.] The secretary of state, upon receipt of the certified statements of the votes given in the several counties from the clerks thereof, shall record the result of such election by counties, and file and carefully preserve such statements. If any county clerk shall fail or neglect to forward to the secretary of state any statement hereinbefore required to be forwarded to him, such secretary shall obtain the same from the governor or state treasurer, if received by either of them, and if not so received he may by mail or telegraph require such statement from any such clerk, which when obtained he shall file and record as aforesaid. If from any county no such statement shall have been received or obtained within thirty days after an election, the secretary of state may dispatch a special messenger to obtain the same from the clerk thereof, who shall immediately, on demand of such messenger, make and deliver the statement required, which the messenger shall deliver to the secretary of state as soon as may be, to be filed and recorded by him as aforesaid.

148. Meeting of board; obtaining corrected returns; statement of result. [Sec. 94a, Statutes of 1898.] For the purpose of canvassing and ascertaining the result of elections other than for electors of president and vice president, the secretary of state shall appoint a meeting of the state canvassers to be held at his office on or before the fifteenth day of December next after a general election, and within forty-five days after a special election, and shall notify the other members of the board of the same. Such board shall examine such certified statements of the county canvassers, and if it shall appear that any material mistake has been made in the computation of votes given for any person, or that the canvassers in any county have omitted to canvass the votes or any thereof cast at any poll therein, the board may dispatch a messenger to the clerk of such county with their requirement in writing to him to certify the facts concerning such mistake or the reason why such votes were not canvassed, and the clerk to whom any such requirement is delivered shall forthwith make true and full answer thereto, under his hand and the county seal, and deliver the same to such messenger, who shall deliver it with all convenient dispatch to the secretary of state. The said board may adjourn as may be necessary, not more than ten days in all. Upon the certified state-

ments and returns so received the board shall proceed to examine and make a statement of the whole number of votes given at any such election for each of the offices of governor, lieutenant-governor, secretary of state, treasurer, attorney-general, state superintendent, railroad commissioner and commissioner of insurance, or any other state officer, if any there shall be; and another statement of the votes given for representative in congress in each congressional district; each of which statements shall show the names of the persons to whom such votes shall have been given for either of the said offices, and the whole number of votes given to each, distinguishing the several districts and counties in which they were given. Such board shall certify such statements to be correct and subscribe their names thereto; and shall thereupon determine what persons have been, by the greatest number of votes, duly elected to such offices or either of them, and shall make out and subscribe on each statement a certificate of such determination and deliver the same to the secretary of state.

Powers and duties. Duties of state canvassers are ministerial; they cannot take proof as to frauds: *Att'y Gen. v. Barstow*, 4 Wis. 567; *State v. Board*, 36 id. 498. House of representatives can alone determine right to office of member of congress, but supreme court may compel state board to determine which candidate is entitled to their certificate: *State v. Board*, 36 Wis. 498.

If some of the returns upon which the votes for member of congress are, after the canvass thereof, declared invalid, and lawful returns are subsequently made, the successors in office of the former state board of canvassers may be compelled to canvass the later returns: *Belknap v. Board*, 95 Mich. 155.

The duty to send for corrected returns in a proper case is obligatory: *State v. Board*, 36 Wis. 498.

It is said of a similar provision as to sending for returns that it clearly evidences the intention of the legislature that the error or omission of duty by the county clerk should not result in disfranchising the voters of any county: *Rich v. Board*, 100 Mich. 453.

149. Statements to be recorded and published—Certificate of election. [Sec. 94*b*, Statutes of 1898.] Said secretary shall record in his office each certified statement and determination so made by said board, and forthwith make and transmit to each of the persons thereby declared to be elected a certificate of his election under the lesser seal, and cause a copy of such certified statements and determinations to be

published in a newspaper printed at the seat of government. He shall also prepare a like certificate, attested by him as secretary of state, and addressed to the house of representatives in that congress for which any person shall have been chosen, of the due election of such person as a representative of this state in congress, and transmit the same to the said house at the first meeting thereof; and if any of the persons so chosen at such election shall have been elected to supply a vacancy in the office of such representative it shall be mentioned in such certificate.

Effect of certificate. The person holding a certificate of election to a public office will be considered as entitled thereto as against all the world except a *de facto* officer. *State ex rel. McCole v. Kersten* (Wis.), 95 N. W. 120.

150. Returns and canvass of presidential vote. [Sec. 94c, Statutes of 1898.] Whenever in the opinion of the governor the statement of votes given for electors of president and vice-president will not be received from any county before the time fixed for canvassing such votes, he shall appoint a messenger to obtain such statement from the county clerk, and such clerk shall immediately, on the demand of such messenger, make out and deliver to him the statement required, which the messenger shall deliver to the secretary of state as soon as possible, and it shall be filed and recorded by him. For the purpose of canvassing the votes given for such electors the board of state canvassers shall meet at the office of the secretary of state on the Tuesday next after the fourth Monday in November in the year such electors shall be chosen, or sooner if certified copies of the statements of the votes shall have been received from all the counties, and in case all the said copies shall not have been received on said day the board may adjourn from day to day until the same shall be received, not exceeding three days. The board shall proceed in examining and making a statement of the votes, and in determining and certifying the persons chosen as electors, in the manner prescribed by law to be pursued by them in the canvass for state officers, and the secretary of state shall likewise file and record such statement and determination. He shall, without delay, cause a copy, under his hand and the lesser seal, of the determination of said board to be transmitted and delivered to each of the persons so declared to be elected; and, whenever necessary, may employ messengers for that purpose.

151. Canvass, record and publication of vote on question submitted. [Sec. 94*d*, Statutes of 1898.] For the purpose of canvassing and ascertaining the result of the vote taken at any general election upon any proposed amendment to the constitution, or upon any proposition submitted to a vote of the people by the legislature, the secretary of state shall appoint a meeting of the state board of canvassers to be held at his office on or before the fifteenth day of December next after such vote is taken; at which meeting he shall lay before the board the statements received by him of the votes given in the several counties for and against such amendment or for and against such proposition. The board shall proceed to examine such statements and ascertain and determine the result, and shall have the same power therefor as is given by section 94*a*, and shall make and certify under their hands a statement of the whole number of votes given for and against such amendment, and thereupon determine whether such amendment has been approved and ratified by a majority of the electors voting thereon, and shall make and subscribe on such statement a certificate of such determination. They shall also make and certify under their hands a statement of the whole number of votes given for and against such proposition, and shall thereupon determine whether such proposition has been approved, ratified or adopted and subscribe on such statement a certificate of such determination. The secretary of state shall record in his office such certified statements and determinations; and if it shall appear that such amendment or proposition has been approved, ratified or adopted as aforesaid, he shall also make a record thereof, and cause such record to be bound in the volume containing the original enrolled laws passed at the next succeeding session of the legislature, and cause such record to be published with the laws thereof.

Re-canvass of vote. Where it appears, after the board of state canvassers has canvassed the votes cast on the adoption of a constitutional amendment, and after the officers composing that board have gone out of office, that a mistake was made in rejecting the returns from one county, and that the returns from another county were fraudulently altered, the cumulative result being to reverse the determination made by the canvassers, the succeeding board may be compelled by *mandamus* to re-canvass the votes: *Rich v. Board*, 100 Mich. 453.

152. Method of making canvass. [Sec. 94*e*, Statutes of 1898.] The board of state canvassers, in canvassing to ascer-

tain the result of any election, shall canvass only the regular returns made by the county boards of canvassers as provided in this chapter, and shall in no case canvass or count any additional or supplemental returns or statements made by any such board or by any other board or person whatever; nor shall the board of state canvassers canvass or count any statement or return of the result of any canvass which shall have been made by any county board of canvassers at any other time than that mentioned in this chapter.

The board cannot receive testimony *aliunde* the returns before it to sustain or overthrow them. Hence, if a return is, on its face, what the law requires it to be, however fraudulent or false it may be in fact, it must be received and the votes returned therein must be canvassed. The returns required by law, and these only, must form the basis of the canvass: *Att'y Gen. v. Barstow*, 4 Wis. 467; *State v. Board*, 36 id. 498.

Returns which are void on their face must be rejected: *State v. Board*, 36 Wis. 498.

If it is shown upon application for a *mandamus* requiring the state board to disregard a return made by county canvassers that their return, though regular on its face, is based upon an illegal canvass, the court may order such board to ignore such return; and if a legal canvass of the vote so returned is subsequently made the return thereof may be canvassed: *People v. Rice*, 129 N. Y. 449.

If a candidate voted for has died since the election, any citizen may make application to a court for *mandamus* to compel the canvassers to reject and disregard a paper which purports to be a return of a canvass of votes, but which is not properly executed and does not give the results of a legal canvass: *People v. Rice*, *supra*.

MISCELLANEOUS PROVISIONS.

153. Service of process on elector. [Sec. 94f, Statutes of 1898.] During the day on which any general, special, town or charter election shall be held no civil process shall be served on any elector, entitled to vote at such election, in the precinct, in which he is entitled to vote or while going to or returning therefrom.

Extent of privilege. The implication from this section is that service of process on election day upon one who is not an elector is good: *Well v. Geler*, 61 Wis. 414, 417. The statute only extends to process which is served on the person of the elector: *Corlies v. Holmes*, 20 Wend. 681.

154. Plurality of vote selects—Effect of formalities. [Sec. 94g, Statutes of 1898.] In all elections for the choice of any officers, unless it is otherwise expressly provided by law, the person having the highest number of votes for any office shall be deemed to have been duly elected to that office, and whenever it shall satisfactorily appear that any person has received a plurality of the legal votes cast at any election for any office, the canvassers shall give to such person a certificate of election, notwithstanding the provisions of law may not have been fully complied with in noticing or conducting the election or canvassing or returning the votes, so that the real will of the plurality may not be defeated by any informality.

Notice of election. See note to paragraph 84.

Informal returns. See note to paragraph 130.

Plurality elects. If an election is honestly conducted and illegal votes are not received, the fact that legal votes were rejected, through error of judgment only, in numbers sufficient to have changed the result, does not invalidate the election. The candidate who receives the plurality of the votes is elected: *State v. Hanson*, 87 Wis. 177.

155. Officers' and messengers' compensation. [Sec. 94h, Statutes of 1898.] A reasonable compensation shall be paid to inspectors and clerks of election, and to ballot clerks, county and district canvassers and messengers employed and performing duties under the provisions of this chapter, to be fixed by the town, village or county board or common council, and paid from the treasury of the town, village, county or city by which employed. The messenger of the canvassing board of a senate or assembly district shall be paid by the county to which he shall be sent. Every messenger sent by the governor, secretary of state or state board of canvassers shall be paid out of the state treasury a reasonable compensation to be fixed by the secretary of state.

156. Election and registry blanks. [Sec. 94i, Statutes of 1898.] The secretary of state shall make out all necessary blanks, returns and statements to carry out the provisions of law for making the canvass, returns and statements of all elections, general, special and judicial, and for making the registers required by law, applications for registry in writing, and affidavits of non-registered voters and freeholders corroborating the same. Such blanks shall contain the necessary

oaths and certificates of the inspectors, clerks of election and canvassers, with proper notes to the same explanatory of their use and referring to the statutes, and cause the same to be distributed to the county clerks of the several counties on or before the first day of August in each year in which any such election shall be held.

157. Distribution of blanks; failure to use. [Sec. 94j, Statutes of 1898.] Such blanks shall be distributed to the proper town, city or village clerks or inspectors in each county by the county clerks at the time notices for the general elections are served upon them, and may be sent by mail when practicable. Such clerks shall furnish the inspectors of elections in their respective towns, wards, villages and election districts with such registry blanks at or before the time fixed for the first meeting for registry, and the other blanks before the opening of the polls on the day of election, and such clerks and inspectors shall use such blanks when furnished; but no election or election returns shall be invalidated in consequence of failure to use such blanks.

11—E. L.

PART VIII.

OF ELECTION TO FILL VACANCIES.

When vacancies filled, 158.

Notice of election, who to give, 159.

Special elections, when to be held, 160.

How special elections ordered, 161.

Notice of special election, who to give and how—Forms to be prescribed by secretary of state, 162.

Election, how held; canvass, 163.

158. When vacancies filled. [Sec. 94k, Statutes of 1898.] All vacancies in the office of representative in congress, senator or member of assembly or in any state office (except governor and lieutenant-governor) may be filled at a general or special election, or by appointment in the cases provided by law when any such vacancies shall occur within four months, and if in a state office or in that of state senator or representative in congress more than twenty days, before the general election; and when occurring earlier than said four months, if it shall not have been supplied by special election, the same shall be filled at the general election next succeeding the happening thereof. When a vacancy shall occur in any such office, except representative in congress, senator or member of assembly, within six months next before the end of the term, no election shall be held, but the same shall be filled by appointment or otherwise as provided by law.

159. Notice of election who to give. [Sec. 94l, Statutes of 1898.] If a vacancy shall exist in the office of state senator, representative in congress or in any state office which by law shall be supplied at the ensuing general election, the secretary

of state shall, twenty days at least before such election, give notice in writing to the clerk of each county, when the vacancy is in a state office, or in case of such vacancy in a district then to the clerk of each county therein, specifying the cause of such vacancy, the name of the officer in whose office it occurred and the time when his term of office will expire. Upon receipt thereof the county clerk shall thereupon forthwith cause a notice containing the substance of the notice received by him to be transmitted by mail to each town clerk and the clerk of each village in which by law separate general elections are to be held, and to one of the inspectors in each ward in any city and in each election district in his county. Such clerks and inspectors shall cause the same to be posted at least five days before election in the manner prescribed in chapter 5.¹

In their note to this section the editors of the Statutes of 1898 say: "The words in this section following the word 'village,' viz., 'in which by law separate general elections are to be held,' have no significance because all villages are now separate for election purposes; they were not so when the revisers prepared their bill, and the proper change was not made in this section because of oversight."

Who to give notice. In case of death of sheriff, under-sheriff to give notice: *State v. Orvis*, 20 Wis. 235.

Failure to give notice. See note to paragraph 84.

160. Special elections, when to be held. [Sec. 94m, Statutes of 1898.] Special elections may be held in the following cases:

1. When there shall have been neglect or failure to choose at a general election a representative in congress, senator, member of assembly, or any county officer who by law should have been chosen at such election.

2. When the right of office of a person elected to either of the offices last aforesaid shall cease before the commencement of the term of office for which he shall have been elected; but no such special election for any county officer shall be held after the next ensuing first Monday of January.

3. When a vacancy shall occur in the office of member of assembly before the first day of February, and in the office of a senator before said day in the second year of his term and too late to have been filled at the previous general election, or when a special session of the legislature shall be called to meet after a vacancy occurring in either.

¹See paragraph 86. Ch. 5, statutes of 1898, is paragraphs 50-157 of this compilation.

4. If a vacancy which by law might have been filled at the next general election thereafter shall not have been filled, a special election therefor shall then be held except in case of county officers.

5. When in any other case a vacancy not provided for in this section shall exist, the governor, in his discretion, shall direct.

161. How special elections ordered. [Sec. 94*n*, Statutes of 1898.] All special elections for county officers shall be ordered by the county clerk, except that a special election for county clerk shall be ordered and noticed by the sheriff in the manner required of such clerk in other cases. The officer who orders such an election shall give notice in the manner hereinafter provided. All other special elections shall be ordered by the governor. Every such order shall specify the office to be filled, how the vacancy occurred, the name of the officer in whose office it occurred, the time when his term of office will expire, the county or district in which and the day on which such election shall be held, which day shall not be less than ten nor more than forty days from the date of such order. When made by the governor, such order shall be filed and recorded in the office of the secretary of state; when made by the county clerk, it shall be filed and recorded in the office of the sheriff, and when made by the sheriff shall be filed and re- in the office of said clerk.

Order of election. "The time for holding an election, whether general or special, must be authoritatively designated in advance, either by law or by some means which the law has prescribed, otherwise the election is held without authority, and is ineffectual for any purpose:" *Kenfield v. Irwin*, 52 Cal. 169; *People v. Hoge*, 55 id. 612, 620.

A statute requiring the governor to issue his proclamation for an election to fill a vacancy is mandatory, and an essential prerequisite to such an election: *McKune v. Willer*, 11 Cal. 49. This was held where the vacancy was filled at a general election.

162. Notice of special election who to give, and how—Forms to be prescribed by secretary of state. [Sec. 94*o*, Statutes of 1898.] The secretary of state shall cause a copy of each notice of election issued by him, and of each order made by the governor for a special election, to be published in the official state paper once in each week from the date of such notice or order until the election to which it shall refer; and on receipt of such

order shall cause a copy thereof forthwith to be transmitted to the county clerk of the county, or in case of a vacancy in a district embracing more than one county, then to the county clerk of each county any part of which is in such district. The county clerk, on receiving or on countersigning any order for a special election, shall forthwith give notice of such election in the manner provided for giving notices of general elections. Every town, village and ward officer or inspector of election who shall receive any such notice shall forthwith give notice thereof in the manner required of him in case of general election. At the time of making the certificate required by section 33,¹ or at the time of the publication of the notice required by this section, the secretary of state shall transmit to each county clerk a form of notice to be used by him under section 37,² and also a form of the ballot to be used by him.

Notice of election. The rule in this state is that if the electors generally have knowledge that the vacancy is to be filled at such an election, the fact that notice of it was not given by the officers charged with that duty is not material: *State v. Goetze*, 22 Wis. 363; *State v. Orvis*, 20 id. 248; *State v. McKinney*, 25 id. 416. See note to paragraph 29; *State v. Thayer*, 47 N. W. Rep. 704.

It has been said in a case where the election was a special one, held at a different time than that fixed for the general election, and where notice was given by posting but not by newspaper publication that "when a special election to fill a vacancy is ordered there is no presumption that the voters know the date fixed by the writ of election, and they must be informed of it. But the established rule is that the particular form and manner pointed out by the statute for giving notice is not essential. Actual notice to the great body of electors is sufficient. The question in such cases is whether the want of the statutory notice has resulted in depriving sufficient of the electors of the opportunity to exercise their franchise to change the result of the election:" *Wheat v. Smith*, 7 S. W. Rep. 161.

163. Election, how held; canvass. [Sec. 94p, Statutes of 1898.] Special elections shall be held at the place, and conducted by the officers, and the result canvassed in the same manner, and within the same time thereafter certified, in all respects as near as practicable as provided for general elections. No special election shall be held within sixty days next preceding a general election. When a special election as to any officer whose election is required by law to be at a general election is held on the same day as an annual town meeting or

¹Paragraph 62.

²Paragraph 66.

municipal election, the ballots cast at such special election shall be deposited in a separate box provided for that purpose. This chapter does not relate to the filling of vacancies in judicial offices.

Separate box. Ballots deposited in the wrong box by fault of inspectors should be counted: *State v. Horan*, 85 Wis. 94.

PART IX.

OF THE ELECTION OF JUSTICES OF THE SUPREME COURT, CIRCUIT AND COUNTY JUDGES.

When held; notice of, 164.

Time of holding, 165.

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Second judicial circuit, branches of, 167.

Vacancies, when filled, 168.

Ballots; separate boxes; polls, opening and closing of; canvass of votes, 169.

164. When held, notice of. [Sec. 94q, Statutes of 1898.] All elections for justices of the supreme court and for circuit and county judges shall be held on the first Tuesday in April. The secretary of state shall give at least twenty days' notice of all judicial elections; and if the election is for a county judge the notice shall be given in the county in which the judge is to be elected; if for a circuit judge in the circuit in which he is to be elected; and if for a justice of the supreme court in the state at large.

165. Time of holding. [Sec. 94r, Statutes of 1898.] In all cases where the term of office of such justice or judge is about to expire the election shall be held on the first Tuesday of April next prior to the time of the expiration of such term as fixed by law, and in case no such election is then held, then, except in the case of a county judge, such election shall be held on the first Tuesday of April next thereafter, or on some subsequent first Tuesday in April after the expiration of such term of office.

166. Two or more judges in same circuit. [Sec. 1, ch. 2, laws of 1899.] Whenever an election for two or more judges

of the circuit court shall occur on the same day in any judicial circuit wherein two or more judges of said court are authorized by law, such election shall not be special as to either of said judges, but shall be notified, held and conducted, and the results canvassed and returned for such judgeships jointly in the same manner as at general elections. The notice of such election shall plainly state the number of judges to be voted for. One ballot box shall be used, and the official ballot shall contain the names of all candidates for such judgeships, and state the number of judges to be voted for, designating such candidacy as "for circuit judge." The names of nominees of political parties shall be arranged upon the official ballot in separate columns, and properly designated; the names of all other candidates shall be placed in other columns each such name in a separate column, all of which last mentioned column shall be arranged in the alphabetical order of the sur-names of such candidates and properly designated. Each elector may vote for the number of judges to be chosen and the candidates receiving the highest number of votes at such election shall be elected, that is to say, if two candidates are voted for the two receiving the highest number of votes shall be elected if three candidates are voted for the three receiving the highest number of votes, shall be elected and the same method shall prevail if there be a greater number.

167. Second judicial circuit; branches of. [Sec. 1, ch. 5, laws of 1905.] For the purpose of convenience in the transaction of business and certainty in filling judicial positions the circuit court of the second judicial circuit is hereby divided into branches to be numbered from one upward, and hereafter the election and appointment of judges thereof, whether for a full term or to fill a vacancy, shall be for a certain numbered branch of such court. Notice of election shall plainly state the number of judges to be voted for, the name or names of judges whose successors are to be voted for, and the number of the branch of such court presided over by each. One ballot box shall be used and the official ballot shall contain the names of all candidates regularly nominated as now provided by law, designating such candidacy as, "for Circuit Judge (to succeed ———, Branch No. ———)." Each elector may vote for one candidate for each branch of the court required to be filled at such election and the person receiving the highest number of votes for circuit judge for any

particular branch shall be declared elected as the judge of such branch and the successor of the incumbent thereof, if any. [Section 2, laws of 1905.] That branch of said court now presided over by Lawrence W. Halsey is hereby designated as branch No. 1; that presided over by Warren D. Tarrant as branch No. 2; that presided over by Orren T. Williams as branch No. 3; and that to be presided over by the judge to be elected on the first Tuesday of April, 1905, under and pursuant to the provisions of chapter 2 of the laws of 1903, to be designated as branch No. 4.

168. Vacancies, when filled. [Section 94s, Statutes of 1898, as amended by sec. 1, ch. 7, laws of 1899, sec. 4, ch. 10, laws of 1903, and ch. 91, laws of 1905.] In all cases of vacancy in the office of circuit judge or county judge, the election to fill such vacancy shall be held on the first Tuesday of April next after the vacancy happens, in case such vacancy happen twenty days or more before such day; but if no election be then held for such purposes, or if the vacancy happen within twenty days before such first Tuesday, then the election shall be held on the first Tuesday of April next thereafter. In all cases of vacancy in office of justice of the supreme court the person appointed to fill such vacancy shall continue to hold his office until an election can be had in some year in which no other justice is elected and until his successor is elected and qualified: Provided that no election to fill a vacancy for justice of the supreme court, circuit judge or county judge shall be held at the time of holding the regular election for such office.

169. Ballots; separate boxes; polls; opening and closing of; canvass of votes. [Sec. 94t, Statutes of 1898, as amended by sec. 1, ch. 47, laws of 1899.] Elections for justices of the supreme court, circuit, county and municipal judges shall be notified, held and conducted and the results canvassed and returned in the same manner as at general elections. The ballots therefor shall be printed, furnished and distributed by the county clerks at the expense of the county as other official ballots are distributed, so prepared as to indicate the candidates or the nominees to be voted for and the respective judicial office for which each is intended as a ballot substantially in the form prescribed in section 38.¹ All votes given for

¹Paragraph 87.

any such officer shall be put in a ballot box, separate from that used for any other election on the same day. The polls of election for such officers shall open and close at the same time that the polls are opened and closed for the election of other officers who are voted for at the same time and place, or if no other officers are then being voted for they shall open and close at the same time at which they would be opened and closed, in the locality in which they are located at any general election. Within a like time as prescribed for the county canvass after a general election, a board of county canvassers shall be convened, who shall canvass the statements received from the several polls in the county and make a statement thereof, and return the same including the votes for the office of county judge, as at a general election and they shall determine who is elected to the office of county judge, and the county clerk shall give him a certificate thereof.¹ The board of state canvassers shall be convened on or before the fifteenth day of May to canvass the statements of votes received for justice of the supreme court or circuit judge in like manner and shall have the powers and perform the duties in relation thereto, so far as applicable, as prescribed in respect to the canvass for state officers. And all the provisions of law respecting the qualifications of voters, the conduct of elections and the canvass and return of votes at general elections, shall be applicable to elections held under this chapter.²

Separate ballot-box. Ballots for candidates for non-judicial offices deposited in the box for judicial ballots by fault of election officers are to be counted for the persons for whom cast. *State v. Horan*, 85 Wis. 94.

¹ See form under paragraph 138.

² Ch. 7, Statutes 1898, paragraphs 164-169 hereof, except such paragraphs as were first enacted in 1899 or 1901.

PART X.

OF THE ELECTION OF SENATORS AND REPRESENTATIVES IN CONGRESS AND PRESIDENTIAL ELECTORS.

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ELECTION OF ELECTORS OF PRESIDENT AND VICE-PRESIDENT.

When elected, 174.
How nominated, 174a.
When electors to meet; vacancies, how filled, 175.
Certificates of election, 176.
Electors' compensation, 177.

170. Election of senators. [Sec. 94u, Statutes of 1898.]
Senators in congress shall hereafter be elected as provided by the statutes of the United States. The meeting of the senate and assembly in joint convention shall be held in the hall of the assembly. Each member shall vote viva voce upon a call of the roll, and such votes shall be entered upon the journal of the convention. The president of the senate and speaker of the assembly shall cause a statement in duplicate of the result of such election to be made under their hands, certifying who has been chosen such senator; one of which statements they shall deliver to the governor, to be filed and recorded in the executive office, and the other they shall deliver to the secretary of state, who shall file and record the same in his office. In case the president of the senate and speaker of the assembly or either of them shall neglect or refuse to execute and deliver such statement, the chief clerk of the sen-

ate or of the assembly, respectively, shall make and deliver, as aforesaid, such statement in duplicate, setting forth the whole number of votes given on the final ballot and the number thereof received by each person then voted for.

171. Certificate of election. [Sec. 94v, Statutes of 1898.] Immediately thereafter the governor shall certify the election of such senator under the great seal to the president of the senate of the United States, and the secretary of state shall countersign such certificate.

172. Representatives, when elected. [Sec. 94w, Statutes of 1898.] A representative in the congress of the United States shall be chosen in each of the congressional districts into which the state is or shall be divided, at the general election in the year one thousand eight hundred and ninety-eight, and every two years thereafter.

173. Resignation or death of representative. [Sec. 94x, Statutes of 1898.] If a representative in congress shall resign, he shall forthwith transmit a notice of his resignation to the secretary of state; and if a vacancy shall occur by death or otherwise in the office of representative in congress, the county clerk of the county in which such representative shall have resided at the time of his election shall, without delay, transmit a notice of such vacancy to the secretary of state.

ELECTION OF ELECTORS OF PRESIDENT AND VICE-PRESIDENT.

174. When elected. [Sec. 1, ch. 369, laws of 1905.] There shall be chosen at an election held in each precinct of the state on the first Tuesday of April, in each year in which electors for president and vice president of the United States are to be elected, delegates to the national convention of each party to nominate candidates for president and vice president. Such elections shall be noticed, held and conducted and the results canvassed and returned in the same manner that elections of judges of the supreme and circuit courts are noticed, held and conducted and the results canvassed and returned. The four candidates for delegates-at-large, of each political party, receiving the highest number of votes shall be the dele-

gates-at-large and the four receiving the fifth, sixth, seventh and eighth largest number of votes shall be alternate-at-large. The two candidates for delegates, of each political party, in each congressional district receiving the highest number of votes shall be delegates from such district and the two receiving the third and fourth highest number of votes shall be alternates.

"Although the electors are appointed and act under and pursuant to the constitution of the United States they are no more officers or agents of the United States than are the members of the state legislatures when acting as electors of federal senators, or the people of the states when acting as electors of representatives in congress." Hence state courts have jurisdiction of a prosecution for illegal voting for such electors. In *re Green*, 134 U. S., 337.

174a. How nominated. [Section 2, ch. 369, laws of 1905.] Nominations for candidates for delegates shall be made by nomination papers, in the manner provided by law for nomination of candidates to be voted for at a general election.

175. When electors to meet—Vacancies, how filled. [Sec. 94z, Statutes of 1898.] The electors of president and vice president shall convene at the capitol of this state on the second Monday in January next after their election, at the hour of twelve o'clock noon, of that day, and if there shall be any vacancy in the office of an elector, occasioned by death, refusal to act, neglect to attend, or other cause, the electors present shall immediately proceed to fill by ballot, and by plurality of votes, such vacancy in the electoral college, and when all the electors shall appear, or the vacancies shall have been filled as above provided, they shall proceed to perform the duties required of such electors by the constitution and laws of the United States.

176. Certificates of election. [Sec. 94aa, Statutes of 1898.] The secretary of state shall prepare three lists of the names of the electors, procure thereto the signature of the governor, affix the great seal of the state to the same, and deliver such certificates thus signed to one of the electors on or before the said second Monday in January.

177. Electors' compensation. [Sec. 94ab, Statutes of 1898.] Every elector of this state for the election of a president and

vice president of the United States, who shall attend and give his vote for those officers, at the time and place appointed by law, shall be entitled to receive two dollars and fifty cents for each day's attendance at such election, and ten cents for every mile he shall travel in going to and returning from the place where the electors shall meet, on the most usual route, to be paid out of the state treasury.

PART XI.

ELECTION OF COUNTY OFFICERS.

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What officers to be chosen, 179.

County judge, when elected, 180.

County superintendent, who eligible, 181.

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178. Time of. [Part of sec. 4, art. 6, constitution.] Sheriffs, coroners, registers of deeds, district attorneys, and all other county officers, except judicial officers, shall be chosen by the electors of the respective counties, once in every two years. Sheriffs shall hold no other office, and be ineligible for two years next succeeding the termination of their offices.

179. What officers to be chosen. [Sec. 698, Statutes of 1898, as amended by ch. 307, laws of 1903.] At the general election in the year one thousand nine hundred and four and biennially thereafter, there shall be elected in each county for a regular term, the following county officers, viz.: A county clerk, treasurer, sheriff, coroner, clerk of circuit court, district attorney, register of deeds and surveyor. The regular term of office of all such officers shall commence on the first Monday of January next succeeding their election and continue two years; but each such officer, including those now in office, shall hold his office until his successor is qualified.

A superintendent of schools shall be chosen by the qualified electors of each superintendent district in the state of Wisconsin, at the election to be held on the first Tuesday in April in the year one thousand nine hundred and five and biennially thereafter, and said officer shall hold his office for the term of two years from the succeeding first Monday of July. The

county or district superintendent chosen at the general election in November, A. D. 1902, or thereafter appointed, shall hold and continue in office as such until the first Monday in July, A. D. 1905, and their successors shall be chosen as hereinbefore prescribed at the election in April, A. D. 1905. The superintendent of each district shall hold his office until his successor is elected and qualified.

District attorney, eligibility. It was said, *arguendo*, in *State v. Russell*, 83 Wis. 330, 332, in answer to the assertion that there is no statute which requires the district attorney to be a member of the bar, that "there is no statute which requires the attorney-general to be a lawyer, or the judges of the supreme court to be lawyers. Such a qualification is inherent in the very office itself, and required by the very duties to be performed by him. The prosecutor of the pleas of the state is here called the 'district attorney.' To be a district attorney he must be a lawyer. He is not an attorney in fact. He must be an attorney at law."

The word "attorney" indicates a person licensed by a court or courts to appear before it or them; the words "prosecuting attorney," in the constitution, mean one specially charged with the conduct of a certain portion of the public business pending in court. Hence a person who has not been admitted as an attorney at law by some court is not eligible to the office of prosecuting attorney: *People v. May*, 3 Mich. 598.

180. County judge, when elected. [Sec. 2441, Statutes of 1898, as amended by sec. 2, ch. 7, laws of 1899, ch. 91, laws of 1905, and ch. 301, laws of 1905.] There shall be a general election of county judge in each county on the first Tuesday of April, 1905, and every fourth year thereafter. The term of office of county judge shall be four years, commencing on the first Monday of January after such election. When a vacancy shall occur in the office of county judge, or there shall be no person qualified to take the office at the commencement of the term, the governor shall appoint such judge, and the person so appointed shall hold until the first Monday of June next succeeding an election to fill such vacancy; but when no election to fill such vacancy is held then such appointment shall be for the residue of the term, and where any county judge shall be elected in a newly organized county the judge first elected shall hold his office until the first Monday of January following the first general election for county judges thereafter. Every county judge may be removed from office by an address in the manner provided in the constitution for the removal of justice of the supreme or judges of the circuit courts.

181. County superintendent, who eligible. [Sec. 702a, Statutes of 1898, as amended by sec. 14, ch. 351, laws of 1899.] No person shall be eligible to the office of county superintendent of schools who shall not, at the time of his election or appointment thereto, have taught in a public school in this state for a period of not less than eight months, and who shall not, at such time, hold a certificate entitling him to teach in any public school therein, or a county superintendent's certificate, issued by the state superintendent after examination by and upon the recommendation of the board of examiners for state certificates as provided by law; provided, that the foregoing provision shall not disqualify any person who held such office in this state on or before the first day of May, one thousand eight hundred and ninety-five.

[Section 461cc, created by ch. 46, laws of 1905.] A person shall not be ineligible to the office of county superintendent of schools on account of residence in cities of the third and fourth class within the territorial limits of any such district.

See paragraph 87. A resident of a city which is not within the jurisdiction of a county superintendent is not, for that reason, ineligible to that office: *State v. Goldthwaite*, 16 Wis. 146.

182. Members of county board. [Sec. 662, Statutes of 1898.] Every ward or part thereof of any city, every incorporated village or part of such village shall be represented in the county board of supervisors of the county in which such ward or part thereof, or city or village or part thereof, is situated, by one supervisor;¹ all such supervisors shall be elected annually by the electors of such wards, parts of wards, villages or parts of villages, respectively, at the same time and in the same manner as city and village officers are elected. And when any vacancy shall occur in the office of such supervisor the proper common council or board of trustees shall fill such vacancy by appointment. The holding of the office of such supervisor by any person shall not disqualify him from being a member of the common council of the city or board of trustees of the village in which he is elected or appointed.

¹See paragraph 211 as to supervisors' terms in Milwaukee county.

PART XII.

TOWN MEETINGS.

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183. Annual town meeting, when held. [Sec. 782, Statutes of 1898.] There shall be an annual town meeting in each town on the first Tuesday of April. At such meeting there shall be an election of such officers as are required by law to be elected, and such other business shall be done as is by law required or permitted to be done at such meeting; and no notice of holding any annual town meeting need be given.

Method of procedure. The following propositions have been announced by the supreme court for the government of town meetings (*where the method of procedure is not expressly provided by the statute, in which case the method prescribed should of course be followed*):

1. "With the exception of the election of those officers which the statute prescribes shall be elected by ballot, all, or nearly all, of the functions of a town meeting are such as pertain to a deliberative body or assembly."

2. The subjects upon which a town meeting may take action are numerous and diversified. The course of procedure which is to be pursued is not fully marked out by statute, and it is quite safe to say that *when the statute does not give direction*, the general rules of parliamentary law, so far as they may be applicable, should be observed and enforced in conducting the business of a town meeting.

3. Propositions upon which the town meetings may lawfully act may be (except where otherwise provided by statute) submitted to it by a motion or resolution, or in the form of proposed by-laws or orders, by any elector of the town, for the consideration of the meeting.

4. The chairman of the meeting cannot prevent action upon any subject within the powers conferred by law upon the meeting, by neglecting or refusing to present the same to the meeting for its action.

5. Any of the propositions before mentioned are open for discussion or amendment and may be adopted or rejected by the meeting, or adopted in part and rejected in part; and the action of the meeting thereon may be reconsidered, if a motion to reconsider be made within one hour after the vote was taken.

6. Unless otherwise ordered by the meeting, the vote upon any such proposition should be taken viva voce, or by a division. It is probable that the meeting has the power to direct the vote to be taken by ballot; but before it can properly do so, reasonable opportunity ought to be given the electors to amend and perfect the proposition; the same should be voted upon separately, and the result of the ballot must be ascertained and declared in time to give any elector an opportunity to move a reconsideration of the vote. State ex rel. v. Davidson, 32 Wis. 114.

Meeting an election. A town meeting is an *election*, within the general meaning of the word. Where an act provides that the town may vote upon the issuing of bonds for the payment of stock in a railroad company, at any annual election, or at a special election, the vote may be taken at a town meeting, and the polls of such election kept open until sundown, instead of closing them at 5 p. m., the hour for closing the polls at a town meeting. *Phillips v. Town of Albany*, 28 Wis. 340.

184. Where held; place of holding, how changed—Provision as to Milwaukee county. [Sec. 783, Statutes of 1898, as amended by sec. 1, ch. 86, laws of 1899.¹] The annual town meetings in each town shall be held at the place where the last town meeting was held, or at such other place therein or in a city or incorporated village within or adjoining the town as shall have been ordered at a previous meeting, or when there has been no such previous meeting at such place as shall be directed in the act or proceedings by which the town was organized. When twelve electors shall file with the town clerk at least four and not more than six weeks before any annual town meeting their written request² that the place of holding such meeting be decided by ballot, he shall within one week after the filing of such request post notices³ in at least four public places in said town stating that the place of holding the annual town meeting will be decided by ballot at the town meeting then next to be held. Each elector may vote a ballot designating thereon a building or public hall within said town or such city or village, which ballots at the close of the polls shall be canvassed and the result certified and recorded. The place receiving the largest number of ballots shall be established as the place of holding the annual town meeting thereafter until otherwise ordered. In towns which

¹See paragraphs 218, 219, as to changing place of holding town meetings.

²FORM OF REQUEST THAT THE PLACE OF HOLDING ANNUAL TOWN MEETING BE DECIDED BY BALLOT.

The undersigned, electors of the town of —, in the county of —, state of Wisconsin, hereby request that the place of holding the annual town meeting be decided by ballot, at the annual town meeting therein to be held on the — day of —, 190—.

Dated this — day of —, 190—.

(Signatures.)

³FORM OF NOTICE TO BE GIVEN BY TOWN CLERK.

To the electors of the town of —, county of —, state of Wisconsin:

The written request therefor of twelve (or more) electors of said town having been duly filed with the town clerk thereof, notice is hereby given that the place of holding the annual town meeting of said town will be decided by ballot at the annual town meeting to be held therein on the — day of —, 190—.

Dated this — day of —, 190—.

—, Town Clerk of the Town of —.

are divided into election districts the annual meeting shall be held, until the electors otherwise determine, in the district designated as the first election district; provided that in counties having a population of two hundred thousand inhabitants or over, according to the last census, votes for town and judicial officers shall be cast at the polling booths in the election district where the voter resides in the manner provided for general elections. The meeting of any town board of supervisors for auditing accounts, equalizing taxes, and other legal meetings of said board, may be held at and in any incorporated village or city in this state, which is within or adjoining the town of which said supervisors constitute the town board.

Place for holding town meetings. Under the statute in force in 1873 it was held that the fact that a majority of the ballots for town officers cast at a town meeting indicated the will of the voters that the next town meeting should be held at a place named did not authorize the holding of the meeting there. The proposition was not submitted to the meeting as a deliberative body and the vote by ballot was void: *State v. Davidson*, 32 Wis. 114.

Votes cast by residents of a town which has been duly vacated cannot be counted: *State v. Pierce*, 35 Wis. 93. Ch. 416, laws 1885, prescribed a new way of changing the place of holding town meetings in towns divided into two or more election districts: *State v. Waterbury*, 79 Wis. 207; *State v. Doyle*, 84 id. 678. Votes cast at other than the first precinct under that act could not be counted: *State v. Doyle*, *supra*.

Holding town meeting in city, etc. A clause in a constitution requiring that the elector must "vote in the election district in which he shall at the time be a resident, and not elsewhere" (see paragraph 1 of this compilation for the corresponding provision of the constitution of Wisconsin), is not violated by a provision in a municipal charter that the town meetings and general elections of the inhabitants of a town which surrounds the city on all sides may be held at such places in the city as may be designated by certain officers, although the town does not include any part of the city: *People v. Carson*, 155 N. Y. 491, 50 N. E. Rep. 292.

185. Adjournment to another place. [Sec. 784, Statutes of 1898.] Whenever it shall become impossible or inconvenient to hold a town meeting at the place designated therefor the town board of inspectors or a majority of them, after having assembled at or as near as practicable to such place and opened the meeting, and before receiving any votes, may adjourn such meeting to the nearest convenient place for holding the same, and at such adjourned place forthwith proceed with the

meeting. Upon such adjournment the board of inspectors shall cause proclamation¹ thereof to be made and shall station a constable or some other proper person at the place where such meeting was opened to notify all electors arriving at such place that the meeting has been adjourned and the place to which it has been adjourned.

Provisions not mandatory. In *Wisconsin Central R. Co. v. Ashland Co.*, 81 Wis., 1, 12, the corresponding section of the Annotated Statutes was considered. The case involved the question of enjoining the collection of taxes, one of the grounds alleged being the illegality of the town meeting at which the taxes were levied. At the previous annual town meeting it was voted to hold the next meeting at the court-house in the city of Ashland. It was found that the meeting convened there some time prior to 9 o'clock a. m.; that it was voted that the board adjourn to room 15 S.'s block; that it met there pursuant to adjournment, and was called to order by the chairman at 9 o'clock a. m.; that after the appointment of two election clerks the polls were proclaimed to be open. The inference as to the time of the meeting at the court-house was that it occurred, at most, but a few minutes before 9 o'clock. In respect to the meaning of the words "whenever it shall become impossible or inconvenient to hold a town meeting at the place designated therefore," the court said that the italicised words are flexible in their meaning, and were necessarily addressed to the good judgment of the board; hence it was not material that the records did not show or that the trial court did not find that it was impossible or inconvenient to hold the meeting at that place. The same was true concerning the objection that it did not appear that the place to which it was adjourned was the "nearest convenient place" to the court-house for holding the meeting. The statute does not require that any persons except a majority of the board shall be present at the time of the adjournment. Under sec. 25, Ann. Stats., the bystanders are only to participate in such adjournment in case of the death, absence or refusal of a majority of the board to act, and then only in choosing other persons to act as such board. Hence "the assembling of two members of the board, or others chosen in their places, is all that is absolutely essential to constitute such meeting which may so open and so adjourn." In respect to the proclamation of adjournment, which was not shown to have been made, it was said that the purpose of requiring it is to inform electors who might be then present and who might not otherwise know what had transpired. "If none were present except the members of the board who voted the adjournment upon the motion made, then the making of such proclamation would furnish no information to any one. The object of such proclamation is similar to the object of the requirement to station a constable or other proper person at the place where the meeting was so opened to notify such electors as might subsequently arrive of such adjournment and the place to which the meeting had been so adjourned." There being nothing in the record to show that any elector of the town was kept from the meeting by reason of any want of proclamation or the failure to station a person at

¹ FORM OF PROCLAMATION OF ADJOURNMENT OF TOWN MEETING.

Hear ye! hear ye! hear ye! This town meeting is hereby adjourned (*state place adjourned to*), at which place the said meeting will forthwith be proceeded with.

the court-house, the town meeting was held by a majority of the court to have been valid.

See, as to adjournment of city election to another place, *Brodhead v. Milwaukee*, 19 Wis. 624.

186. Adjournment to another day. [Sec. 785, Statutes of 1898.] Any annual or special town meeting may be adjourned to any other day and from time to time for the purpose of transacting any business of the town except for the election of town officers.

There is no statute requiring an adjourned or special town meeting to be held at any particular hour or to be open for the transaction of business at any particular time except when officers are to be elected: *State v. Supervisors*, 70 Wis. 543.

187. First meeting in new town. [Sec. 786, Statutes of 1898.] The first town meeting in any newly organized town shall be held on the day of the annual town meeting next after its organization; but if the inhabitants of any such town shall fail to hold their first town meeting on the day of the annual town meeting any three qualified voters of such town may call a town meeting for such town at any time thereafter by posting up notices¹ thereof at not less than three public places therein at least ten days previous to the holding of such meeting.

188. Election officers, how chosen. [Sec. 787, Statutes of 1898.] The qualified electors present at such first town meeting between the hours of nine and ten o'clock in the forenoon shall choose one of their number as chairman, two others as inspectors and one as clerk, who shall severally take and subscribe the oath² required of inspectors and clerks of general elections; such oath may be administered by the chairman

FORM OF NOTICE OF FIRST TOWN MEETING IN NEWLY ORGANIZED TOWN.

The inhabitants of the town of —, in the county of —, newly organized, having failed to hold their first town meeting on the day of the annual town meeting, the undersigned, three qualified voters thereof, hereby call a town meeting for said town, and give notice that the same will be held at (*state the place*) on the — day of —, 190—, at (*nine*) o'clock in the forenoon.

(*Signatures.*)

Dated this — day of —, 190—.

FORM OF OATH TO BE SUBSCRIBED BY CLERK AND INSPECTORS.

I, A — B —, clerk (*or inspector*) of election in the town of —, county of —, do hereby solemnly swear (*or affirm*) that I will support the constitution of the United States, and the constitution of the state of Wisconsin, and will perform the duties of clerk (*or inspector*) of election according to law, and will

chosen to the other inspectors and clerk, and either of the other inspectors may thereafter administer the oath to the chairman. They shall thereupon conduct the proceedings of such meeting; and the electors shall possess the same powers as at other annual town meetings.

Shall take oath. See note to paragraph 101.

189. Special meetings, how called; for what purposes. [Sec. 788, Statutes of 1898.] Special town meetings may be held for the purpose of choosing town officers to fill vacancies that may occur and for the purpose of transacting any other lawful business which might be done at the annual meeting, on a request being made to the town clerk in writing signed by twelve qualified voters of such town specifying in such request the purposes for which such meeting is to be held.¹ No matter voted upon or decided at any such special town meeting shall be acted upon in any subsequent special town meeting held in such town prior to the time for holding the next annual town meeting.

A written request. The town records must show that the request for the submission of the question or issuing bonds for the purpose of raising money to build a town hall was made in writing and signed by at least twelve freeholders of the town. An allegation in a complaint in an action to restrain the issuance of such bonds that "it does not appear" that the request was thus made is good: *McVichie v. Knight*, 82 Wis. 137.

Any other lawful business. This provision relates solely to the general powers of towns, and does not affect acts conferring special powers and providing for their exercise at the annual town meeting: *Dullanty v. Vaughn*, 77 Wis. 38.

Time of holding. See note to paragraph 186.

190. Request to be recorded; notice of meeting. [Sec. 789, Statutes of 1898 as amended by ch. 309, laws of 1903.] The

studiously endeavor to prevent all fraud, deceit or abuse in conducting the same.
So help me God.

Sworn and subscribed before me, at —, this — day of —, 190—. A— B—
C— D—, Justice of the Peace, Notary Public, Court Commissioner, or Inspector of Election.

FORM OF REQUEST FOR SPECIAL TOWN MEETING.

To —, town clerk, town of —, county of —:

SIR—You are hereby requested by the undersigned, twelve qualified voters of said town, to call a special town meeting for the purpose of (here state particularly the purpose for which such meeting is to be held).

(Signatures.)

Dated at —, this — day of —, 190—.

town clerk with whom any such request shall be left shall record the same and immediately cause notices to be posted up in three of the most public places in the town, giving at least three weeks', and not more than four weeks' notice of such meeting. Such notices shall specify particularly the purposes for which such meeting is to be held, and if vacancies in office are to be filled, in what office they exist, how they occurred and who were the last incumbents; and if it be in the office of justice of the peace, at what time the legal term of office will expire; and if there be a newspaper printed in such town he shall publish a copy of such notice therein at least five days before the time appointed for such meeting.¹

Notices and posting of them. A complaint in an action to restrain the issue of town bonds alleged to have been voted at a special town meeting is good if it alleges that it does not appear that a request for such meeting was made in accordance with the statute. A notice is fatally defective if it states that the special town meeting will be held at the several voting places of the town, there being more than one such place. A notice of more than twenty days is as defective as if it had been for less than fifteen days, and equally a departure from the statute. It is also fatally defective if it is not signed by the town clerk as such, at least if there is nothing in the notice to show that the person who signed it was town clerk. A complaint which alleges that the notice was not posted up in three of the most public places in the town is good as against the objection that it states a conclusion merely: *McVichie v. Knight*, 82 Wis. 137.

A notice of a special town meeting which states that it was made upon the request of voters of the town for the purpose of giving direction to the supervisors is sufficient to indicate that the meeting was to be held in the town. A failure of the clerk to record the request would not vitiate the election: *State v. Supervisors*, 53 Wis. 291.

If the officer who posts the notice acts fairly according to his best judgment, the courts will not inquire whether he selected the most public places or not: *Sauerhering v. Iron Ridge R. Co.*, 25 Wis. 447. The full fifteen days' notice must be given: *Hubbard v. Williamstown*, 61 Wis. 397.

¹FORM OF CLERK'S NOTICE FOR SPECIAL MEETING.

SPECIAL TOWN MEETING.

Notice is hereby given to the electors of the town of —, in the county of —, state of Wisconsin, that a special town meeting will be held in said town at — (designate place), on the — day of —, 190—, for the purpose (state purpose as in request, but if vacancies in office are to be filled, say: 'For the purpose of filling vacancy in the office of — (give name of office and state how vacancy occurred, whether by death, removal, or otherwise, and who was the last incumbent, and in addition, where vacancy is in office of justice of the peace, state at what time the legal term of office will expire)'; a request for such meeting having duly been made to me in writing, by twelve qualified voters of said town, specifying as aforesaid the objects for which such meeting is to be held. (If the meeting is for the purpose of filling vacancies, add: 'The polls of the election will be opened between the hours of nine and ten o'clock in the forenoon, and closed at five o'clock in the afternoon.)

—, Town Clerk, of the Town of —.

Dated —, 190—.

191. Who to preside. [Sec. 790, Statutes of 1898.] The chairman of the town shall be chairman of the town meetings when present, but if absent one of the other supervisors of the town shall serve as chairman; but if no one of the supervisors be present the qualified electors at such meeting may choose a chairman.

192. Inspectors of election. [Sec. 791, Statutes of 1898.] The supervisors of each town shall be the board of inspectors of election at the town meetings thereof; but if there be a vacancy in said board or any supervisor be absent the electors may choose from the qualified electors of the town inspectors to fill their places, who shall be authorized to act as inspectors of such election.

193. Chairman's powers. [Sec. 792, Statutes of 1898.] The chairman of each town meeting shall regulate its proceedings, decide all questions of order and make public declaration of all votes passed; he shall possess authority to enforce obedience to his lawful requirements; and if a person at such meeting shall conduct himself in a disorderly manner, and after notice from the chairman shall persist therein, the chairman may order him to withdraw from the meeting, and on his refusal may order¹ any constable or other person to take him into custody until the meeting shall be adjourned. He shall have the same authority to preserve order and enforce obedience as is possessed by the board of inspectors at a general election.

194. Town clerk's duties. [Sec. 793, Statutes of 1898.] The town clerk shall be clerk of such town meeting and keep

¹FORM OF ORDER OR PRECEPT TO TAKE DISORDERLY PERSON INTO CUSTODY.

COUNTY OF _____, } ss.
Town of _____.

The State of Wisconsin to any constable of the County of _____ (or to C— D):

Whereas, at the town meeting of the town of _____, now in progress, this _____ day of _____, 190—, A— B— has conducted himself in a disorderly manner (*state in what regard*), and after notice thereof from the chairman has persisted therein, and having been ordered by said chairman to withdraw from said meeting, has refused so to do: You are therefore hereby ordered forthwith to take him, the said A— B—, into custody until the said meeting shall be adjourned.

Given under my hand this _____ day of _____, 190—.

_____, Chairman Town Board of Town of _____.

faithful minutes of the proceedings and a correct poll list¹ containing the names of all persons voting thereat; but if he be absent then such person as shall be appointed by the inspectors shall act as clerk of such meetings. The minutes of the town meetings shall be subscribed by the clerk and filed in the office of the town clerk within five days after such meeting.

195. Election officer to take oath. [Sec. 794, Statutes of 1898.] Every person chosen at any town meeting to act as inspector or appointed to act as clerk shall, before entering upon the duties of his office, take and subscribe the oath required of inspectors and clerks of general elections.

As to the effect of failure to take the oath upon the validity of the election, see note to paragraph 101. For form of oath see note to paragraph 188.

196. Order of business. [Sec. 795, Statutes of 1898.] At the opening of every town meeting the chairman thereof shall state the business to be transacted and the order in which such business will be entertained; and no proposition to vote a tax, except for the relief of the poor and for defraying the necessary town charges, shall be acted upon out of the order of business as stated by the chairman; and no proposition to reconsider any vote shall be entertained at any town meeting unless such proposition to reconsider shall be made within one hour from the time such vote shall have been passed or the motion for such reconsideration shall be sustained by a number of votes equal to a majority of all the names entered on the poll list at such election up to the time such motion shall be made. All questions upon motions at a town meeting shall be determined by a majority of the electors voting.

See note to paragraph 183.

FORM OF TOWN MEETING POLL LIST.

A true and correct poll list kept at a town meeting held in the town of —, in the county of —, Wisconsin, on the — day of —, A. D. 190—, containing the names of all the persons voting at said meeting:

No.	NAME.	No.	NAME.
.....			
.....			
.....			

Total number of ballots, —.

Signed, — —, Town Clerk.

197. Polls, when opened and closed. [Sec. 796, Statutes of 1898, as amended by sec. 1, ch. 402, laws of 1901.] The polls of the election shall be open between the hours of nine and ten o'clock in the forenoon and shall remain open until five o'clock in the afternoon, provided the common council of any city containing less than five thousand inhabitants, the town board of any town or board of trustees of any village in counties of not less than two hundred thousand inhabitants, may by resolution adopted and published in some newspaper in such city, town or village, or in case there be no newspaper published therein, in some newspaper published in the county in which such city, town or village is located at least ten days before the election, fix an earlier hour for the opening of the polls in such city, town or village, not earlier than sunrise, and shall remain open not later than seven o'clock in the evening, and the inspectors shall cause proclamation to be made at the opening of the polls and at the closing thereof and proclamation¹ in like manner at least one hour before the closing of the polls, specifying the hour at which the polls of the election will be closed.

This section has no application to adjourned or special town meetings held for deliberative purposes only, and not for the transaction of business which requires a vote by ballot: *State v. Supervisors*, 70 Wis. 543. See note to paragraph 102.

198. Officers, how chosen. [Sec. 797, Statutes of 1898.] All town officers shall be chosen by ballot except the superintendent or superintendents of highways, who shall be appointed by the town board.

Ballot defined. See note to paragraph 3.

199. Who may vote. [Sec. 798, Statutes of 1898.] Every person who shall have resided in the state one year immediately previous to any town meeting and who shall be otherwise qualified to vote at a general election, including legal

¹FORM OF PROCLAMATION OF OPENING POLLS.

Hear ye! Hear ye! Hear ye! The polls of this election are now open.

OF ADJOURNMENT.

Hear ye! etc. The polls of this election are closed for one hour.

TO BE MADE ONE HOUR BEFORE FINAL CLOSING.

Hear ye! etc. The polls of this election will finally close at five o'clock.

OF CLOSING.

Hear ye! etc. The polls of this election are now closed.

voters residing within any incorporated village which is not independent of the town in which it is situated, may vote at such town meeting in the town where he resides or in which such village or the part thereof in which the voter resides is situated.

Incorporated villages. The editors of the Statutes of 1898 say in a note to this section that the provisions as to voters in villages "is needless because ch. 40 provides that all villages shall be independent of towns. After that change in ch. 40 was recommended by the committee on revision this section was overlooked and hence not corrected."

Residence. See notes to paragraphs 75, 76.

Qualified electors. Sec. 9, art. 13, constitution, provides that "all city, town and village officers, whose election or appointment is not provided for by this constitution, shall be elected by the electors of such cities, town and villages, or of some division thereof, or appointed by such authorities thereof, as the legislature shall designate for that purpose." It has been held that the words "electors of such cities, towns and villages" mean residents therein who have the qualifications prescribed in art. 3, constitution: *State v. Tuttle*, 53 Wis. 45.

Fraudulent election. In *State v. Conness*, 106 Wis. 425, 432, it appeared that thirty-one of the votes cast were illegal; that the votes cast exceeded the number of voters in the town; that both candidates for a town office connived to secure for themselves the votes of a large number of non-residents; that one of such candidates arranged with the foreman in charge of non-residents for payment of their time in going to the polls; that they were supplied with liquors to such an extent that hundreds became intoxicated, and the polls were surrounded by a drunken mob; that scarcely no challenges were made of persons who offered to vote; that a number of residents of the town were supplied with orders on the poor fund just before the election under circumstances which gave rise to the suspicion that it was done to influence votes, and that the conduct of both candidates was reprehensible. Held, that the election was void.

200. Ballots, form of; how cast. [Sec. 799, Statutes of 1898.] In the election of town officers and justices of the peace to be chosen by ballot at town meetings each elector shall publicly at the poll deliver to one of the inspectors of such election a single ballot on which shall be written or printed the names of all the persons voted for by such elector, with a pertinent designation of the respective office which each person so voted for may be intended to fill; and no ballot shall contain a greater number of names designated for any office than there are persons to be chosen at such election to fill such office; and such ballots shall be received, deposited in the ballot-box and kept as is required at a general election.

Names on ballots; ambiguity. Ballots cast for C. H. C., Sr., and C. H. C., Jr., cannot be counted for the former for an office for which

he was a candidate, though C. H. C., Jr., was not a candidate therefor, but was a resident of the town and eligible to the office for which he was voted for. Parol proof is not admissible to show that ballots containing the name of the latter were cast for the former: *State v. Steinborn*, 92 Wis. 605.

201. Ballots for justices. [Sec. 800, Statutes of 1898.] Whenever at any town meeting a justice of the peace is to be elected to fill a vacancy, and also a justice or justices are to be elected for the full term, it shall be necessary to distinguish on the ballot the person voted for to fill such vacancy.

202. Challenge, who may make; grounds of. [Sec. 801, Statutes of 1898.] Every person offering to vote at a town meeting may be challenged as unqualified by any elector or by one of the inspectors of such election upon the same grounds and for the same reasons that a person offering to vote at any general election may be challenged; and when any person so offering to vote is so challenged one of the inspectors shall tender to him the same oath or affirmation required to be tendered to a person challenged at a general election, and shall put to the person so challenged the same questions which the inspectors at a general election are authorized and required to put to a person who is challenged at such election; and all provisions of law relating to the reception or rejection of the vote of any person challenged and the duties of the officers in regard thereto at a general election and all penalties prescribed for any violation of law applicable to a general election shall be applicable to town meetings to the same extent.

See paragraphs 121, 122, 123, 124.

203. Canvass of votes. [Sec. 802, Statutes of 1898.] At the close of every election the votes given by ballot shall be publicly canvassed by the inspectors at the place where the meeting was held, which canvass when commenced shall be continued without adjournment or intermission until the same shall be completed.

Time of marking canvass. See note to paragraph 129.

204. Comparing ballots with poll list. [Sec. 803, Statutes of 1898.] Before the ballots are opened they shall be counted and compared with the number of names of voters on the poll list; and if two or more ballots shall be found folded together,

and the inspectors shall be satisfied from their appearance and from a comparison of the number of votes given with the number of names on the poll list that the ballots so folded together were given by the same person, they shall be rejected; and if the ballots shall be found to exceed in number the whole number of names on such poll list they shall be placed in the box from which they were taken and one of the inspectors shall publicly draw out and destroy unopened as many ballots as shall be equal to such excess; the number of ballots and the number of names on the poll list agreeing or being made to agree, the board shall then proceed to canvass and estimate the votes.

Ballots folded together. See note to paragraph 129.

205. Announcement of result. [Sec. 804, Statutes of 1898.] The canvass being completed and the result ascertained and determined by the inspectors, the clerk shall publicly read to the meeting the names of the persons for whom votes for each office were given and the number of votes so given for each person, and the names of the persons declared to be duly elected by the inspectors to each office respectively; and such reading shall be deemed sufficient notice to every person elected to any office at such meeting of his election whose name has been entered on the poll list as a voter.

206. Written statement of result. [Sec. 805, Statutes of 1898.] The inspectors shall also draw up a statement in writing¹ setting forth in words at full length the whole number of votes given for each office, the names of the persons for whom such votes were given and the number of votes given for each person, and certify upon such statement their determ-

FORM OF STATEMENT BY INSPECTORS OF RESULT OF ELECTION AT TOWN MEETING.

The following is a true and correct statement of the result of an election at a town meeting held at _____, in the town of _____, in the county of _____, on the _____ day of _____, A. D. 190____, setting forth the whole number of votes given for each office, the names of the persons for whom such votes were given, and the number of votes given for each person.

The whole number of votes given for chairman of supervisors was _____, of which A_____ B_____ received _____, and C_____ D_____ received _____. The whole number of votes given for supervisors was _____, of which E_____ F_____ received _____, G_____ H_____ received _____, I_____ J_____ received _____, K_____ L_____ received _____.

[Continue giving the number of votes for each office, and the number received by each person for such office, using words, not figures, to express such numbers.]

Inspectors.

ination of the persons elected, which statement and certificate of determination shall be left with the town clerk and recorded in his office and carefully preserved by him.

Words at full length. See note to paragraph 136.

207. Who elected; tie vote. [Sec. 806, Statutes of 1898.] The person having received the greatest number of votes given for any office at such election shall be deemed and declared duly elected; and if two or more shall have received the greatest and equal number of votes for the same office the inspectors of election shall determine the choice by lot, which lots shall be drawn by the persons receiving the equal number of votes; or in the absence of one or both of such persons or their refusal to draw by lot, the inspectors shall appoint a competent person to draw the same for them, and shall declare and certify the same accordingly.

Determine the choice by lot. See note to paragraph 3. Under a village charter which provided that all elections should be determined by the president and trustees, and that, "in case of a tie vote between two candidates at any election, the election of one or the other of them shall be determined by lot in the presence and under the direction of the president and trustees," there was no authority in such officers, where two candidates each had an equal number of votes, to declare one of them elected; the president and trustees could not go behind or change the returns, and were compellable by *mandamus* to have the election determined by lot: *State v. Grace*, 83 Wis. 295.

208. Ballots on other questions; separate box. [Sec. 807, Statutes of 1898.] If any proposition other than the election of officers be voted upon by ballot at any town meeting the ballots cast upon such proposition shall be deposited in a separate box and a separate poll list kept of the electors voting upon such proposition. The ballots so cast shall be counted and canvassed and the result ascertained, declared and certified in like manner as in the case of ballots cast for officers.

Separate box. See note to paragraph 118. Ballots for candidates for non-judicial offices deposited in the box for judicial ballots by fault of election officers are to be counted: *State v. Horan*, 85 Wis. 94.

209. Ballots for town elections in Milwaukee county. [Sec. 807a, Statutes of 1898.] At all elections of town officers in counties having a population of two hundred thousand or over the same duties are hereby required of town clerks as to the printing and distributing of ballots for town elections as are

now required of county clerks at general elections and of city clerks at municipal elections by sections 41, 42 and 45.¹

210. Canvass of votes in that county. [Sec. 807*b*, Statutes of 1898.] In all counties having a population of two hundred thousand or more the town board of any town divided into election districts pursuant to law, or a majority of them, together with the town clerk of such town, shall constitute the canvassing board of such town, and such board shall meet at the town hall within twenty-four hours after the closing of the polls at every town election in such town, and then and there publicly canvass all the statements theretofore delivered to said town clerk by the inspectors of election as provided in section 807*a*,² and the said canvass shall be made and completed and the result thereof ascertained and determined by said canvassing board; and it shall be the duty of said town clerk to forthwith read publicly the names of the persons for whom votes for each office were given, the number of votes so given for each person, and the name of the person declared to be duly elected to each office respectively; and such reading shall be deemed sufficient notice to every person elected to any office at such meeting of his election.

211. What officers to be elected; supervisors' terms in Milwaukee county. [Sec. 808, Statutes of 1898, as amended by sec. 1, ch. 97, laws of 1899.] At the annual town meeting there shall be elected in each town the following officers, viz.: three supervisors, one of whom shall be designated on the ballots as chairman, a town clerk, a treasurer, an assessor (either two or three, if the town board at their last meeting before such election shall have so ordered), so many justices of the peace as are required by law to be elected at such meeting, so many constables, not exceeding three, as shall be ordered by the meeting, and a librarian, if a town library have been established; provided that in all counties which contain a population of not less than one hundred thousand, such election shall be held biennially in the even-numbered years, and such officers shall hold office for two years. No person except an elector of the town shall hold any town office, and no per-

¹Paragraphs 90, 91, 98.

²Preceding paragraph.

son shall hold the offices of treasurer and assessor at the same time.

Where there was no law authorizing an election for a certain office at an annual spring election, the fact that at that election a number of electors cast ballots for the relator for such office and he received a majority of the votes so cast, does not constitute an election of him to the office, even though there was a vacancy in the office and the legislature had failed in its constitutional duty to provide for an election to fill such vacancy. The State *ex rel. Helm v. Williams*, 114 Wis. 402.

212. Election of justices; filling vacancies. [Sec. 845, Statutes of 1898, as amended by sec. 2, ch. 97, laws of 1899.] There shall be four justices of the peace in each town, of whom two shall be elected at each annual town meeting. Their term of office shall be two years from the first Monday of May next following such town meeting, provided that in all counties which contain a population of not less than one hundred thousand no justices of the peace shall be elected in the odd numbered years, except to fill vacancies, and that in the even numbered years four justices of the peace shall be elected for the term of two years. Every vacancy shall be filled at the annual town meeting next ensuing, unless a special election shall have been held and when so elected such justices shall hold only for the residue of the unexpired term. When a vacancy shall occur, or when any justice shall, from any cause, become permanently unable to perform his official duties, the town board may appoint temporarily a suitable person to such office, to hold until it shall be filled by election and until their successors are elected and qualified.

213. Justice's term in new town. [Sec. 813, Statutes of 1898.] When a new town shall be organized, if there be one or more justices of the peace residing therein, they shall be deemed justices thereof and shall hold their offices according

**FORM OF TEMPORARY APPOINTMENT OF JUSTICE OF THE PEACE TO
FILL VACANCY.**

Whereas, The office of justice of the peace of the town of —, county of —, Wisconsin, has become vacant by the death (or *resignation as the case may be*) of A — B —, late incumbent thereof; or, whereas A — B —, a justice of the peace of the town of —, has become permanently unable to perform his official duties by reason of (*state disability*); we, the undersigned town board of said town do hereby appoint — temporarily to such office, to hold it until it shall be filled by election.

Given under our hands this — day of —, 190—.

— —
— —
— —
Town Board.

to their respective terms; and only so many justices shall be chosen as shall be necessary to make up the number of four in such town.

214. Election duties of town clerks. [Part of sec. 832, Statutes of 1898.] It shall be the duty of the [town] clerk:

1. To act as clerk of all town meetings, perform all the duties of clerk of election and keep faithful minutes of all the proceedings, and record such minutes and enter at length every order, resolution or direction and all rules and regulations made by the meeting in the book of town records; and if in his absence another person shall have acted in his stead, to record the minutes taken by him of the proceedings.

2. To transmit to the county clerk within ten days after any town meeting a certified statement¹ of all town officers elected at the same, showing postoffice address of the chairman, treasurer, assessor and town clerk, and promptly to notify him of any subsequent changes in either of said last named offices, and to notify the persons elected when required by section 809.

3. To forthwith notify the county treasurer of the appointment by the town board of any town treasurer.²

4. To transmit to the clerk of the circuit court, immediately after the election or appointment of any justice of the peace in his town, a written notice, stating the name of each such

FORM OF STATEMENT OF TOWN OFFICERS ELECTED TO BE TRANSMITTED BY TOWN CLERK TO COUNTY CLERK.

To _____, *County Clerk*:

The following is a statement of all town officers elected in the town of _____, county of _____, at the annual town meeting of said town on the _____ day of _____, 190—.

Supervisors

_____, *Chairman*. Post Office Address _____.

_____,

_____,

Town Clerk _____.

(Give a list of all the officers elected, and give the post office address of chairman, town treasurer, assessor and town clerk.)

I hereby certify that the foregoing statement is true.

Dated this _____ day of _____, 190—.

_____, *Town Clerk*.

FORM OF NOTICE TO COUNTY TREASURER OF APPOINTMENT OF TOWN TREASURER.

To _____, *County Treasurer*:

SIR:—You are hereby notified that on the _____ day of _____, 190—, A _____ was appointed by the town board treasurer of the town of _____, county of _____, and that his post office address is _____.

Dated this _____ day of _____, 190—.

_____, *Town Clerk*.

justice¹ and the term for which he was elected or appointed, and when to fill a vacancy, who was the last incumbent of the office, and likewise the name of every constable after he shall have qualified;² and, upon the resignation of a justice, to immediately transmit notice thereof.³

5. To record every request for any special vote or any special meeting, and to properly post the requisite notices thereof as required by law.

* * * * *

12. To post copies of the report of the town board to the annual town meeting on the morning of the day of such meeting in three public places as convenient as possible for the examination thereof by the electors.

13. To read to the people assembled at the annual town meeting, at the time fixed for the transaction of town business, the provisions of these statutes relating to the protection of life and property against forest fires.

*** FORM OF NOTICE BY TOWN CLERK TO CLERK OF CIRCUIT COURT OF ELECTION OF JUSTICE OF THE PEACE.**

To ———, clerk of the circuit court of ——— county:

You are hereby notified that at a town meeting held in the town of ———, in said county, on the ——— day of ———, 190—, the following named persons were elected to the office of justice of the peace of said town, and for the terms set opposite their names, to-wit:

————, ——— years,
 ———, ——— years,
 ———, ——— years,

the last named to fill vacancy in place of ———, last incumbent, who has resigned (or otherwise).

Dated at ———, this ——— day of ———, 190—.

————, Town Clerk.

NOTE.—Notice of appointment of justices may be given, adapting the above form accordingly.

*** FORM OF NOTICE BY TOWN CLERK TO CLERK OF THE CIRCUIT COURT OF ELECTION OR APPOINTMENT OF CONSTABLE.**

To ———, clerk of the circuit court of ——— county:

You are hereby notified that on the ——— day of ———, 190—, A ——— B ——— was chosen (or appointed) a constable in and for said town of ———, in the county of ———, and that said A ——— B ——— has qualified as such constable.

Dated at ———, this ——— day of ———, 190—.

————, Town Clerk.

*** FORM OF NOTICE BY TOWN CLERK TO CLERK OF CIRCUIT COURT OF RESIGNATION OF JUSTICE OF THE PEACE.**

To ———, clerk of the circuit court of ——— county:

You are hereby notified that on the ——— day of ———, A. D. 190—, A B resigned his office as justice of the peace in and for said town of ———, in said county, and that his resignation has been accepted.

Dated this ——— day of ———, 190—.

————, Town Clerk.

14. To perform the duties required in title two respecting elections.¹

ELECTIONS IN TOWNS ON SPECIAL SUBJECTS.

215. Establishment of library. [Sec. 776, Statutes of 1898, provides that "the qualified electors of each town shall have power at any annual town meeting" to do specified things, including the power thus declared by subdivision 4.] 4. To vote by ballot to establish a town library for the use of the people thereof. In taking such vote the electors voting in favor thereof shall vote a separate ballot containing the words "for a town library," and those voting against, a separate ballot containing the words, "against a town library;" and when established, to make all by-laws, rules and regulations for the management thereof, and raise a sum not exceeding one hundred and fifty dollars in any one year for the purpose of purchasing books, furnishing a place to keep such library and paying the librarian for his services, to be expended under the direction of the town board.

216. Erection of landmarks. [Sec. 776, Statutes of 1898, provides that "qualified electors of such town shall have power at any annual town meeting" to do among other things (subdivision 8):] 8. To vote by ballot upon the question of erecting landmarks at section corners and quarter stakes, due notice thereof having been given as provided by law as in case of special town meetings. In taking such vote the electors voting in favor thereof shall vote a separate ballot containing the words "for landmarks," and those voting against a separate ballot containing the words "against landmarks." The town board of such town shall prepare a ballot-box for the reception of ballots cast upon such proposition, which box shall be kept open as long as the polls for the election of town officers.

217. Town building. [Sec. 776, Statutes of 1898, provides that "the qualified electors of each town shall have power at any annual town meeting, to do, among other things (subdivision 10):] 10. To vote by ballot upon the question of raising money to purchase or build a town hall or other building

¹Title two of the Statutes of 1898 is embraced in paragraphs 39-40 and 53-173, with the exception of a few additional acts, not amendatory thereof, enacted in 1899, which are indicated by the references thereto.

for the use of the town of so raising money for the purpose of uniting the same with the money of any other legal corporation or society doing business or located in such town, for the purpose of building or purchasing such hall or other building; but no such vote shall be taken at any town meeting unless a request in writing signed by at least twelve freeholders of such town shall have been delivered to the town clerk twenty days before the holding of such meeting, asking that such proposition be submitted to a vote of the electors of the town at such town meeting, and setting forth the amount of money which they desire shall be raised by the town for that purpose and whether the same shall be raised by a direct tax or the issue of the bonds of the town; and if the proposition be to issue town bonds it shall state the denomination thereof, the time and place of the payment of the principal and interest, and the manner in which and by whom the same shall be negotiated; and if to be raised for the purpose of uniting the same with the money of some other legal corporation or society, the name of such corporation or society; nor unless the town clerk shall have given notice as is required in the case of a special town meeting that such proposition would be voted upon at such meeting. In taking such vote the electors voting therefor shall vote a separate ballot containing the words "for raising money to build a town hall," and those voting against a ballot containing the words "against raising money to build a town hall."

Statute must be strictly followed. In *McVichie v. Town of Knight*, 82 Wis. 137, which case arose under this subdivision, the court said: "To justify such a vote, and the issue of said bonds, and the consequent taxation, the antecedent proceedings must be strictly according to the statute, and the jurisdiction of the town board to issue the bonds must appear on the records of the town; and no presumptions can be indulged in favor of the officers that they performed their duties." In that case it did not appear that the request was made in writing; the notice was fatally defective because it called the election in more than one place, because it was posted for more than twenty days, and because no official designation was attached to the name of the person who signed it.

218. Changing place of holding elections. [Sec. 1, ch. 338, laws of 1899.] The town board of any town may, by resolution, provide that the question of changing the place for holding town meetings in any such town, be submitted to a vote of the electors at any regular town meeting held in the town, and if at any such town meeting a majority of the electors shall vote in favor of changing the place for holding any such

election, then all elections and town meetings thereafter held in any such town, shall be held at the place so designated. The town board shall designate by resolution the place to which the change is to be made, and shall prescribe such place with reasonable accuracy, which designation and description shall be embodied in the notice to be given by the clerk as hereinafter provided. The town clerk shall, at least ten days before the holding of any such election at which the question of changing the place for holding elections is to be voted upon pursuant to any resolution of the town board, cause notice of that fact to be given to the electors of the town by posting up notices in three public places in the town, which notices shall state that the question of changing the place of holding elections and town meetings is to be voted upon at the town meeting, stating when and where such election or meeting is to be held, and also the place to which the same is to be changed, which place shall be described with reasonable accuracy.¹

See paragraph 184 and note thereto.

219. Form of ballot. [Sec. 2, ch. 338, laws of 1899.] The town board shall procure, at the expense of the town, a suitable number of ballots which shall be printed in the following form:

For changing the place of holding elections.....	
Against changing the place of holding elections.....	

If the voter desires to vote for the proposition, he will do so by putting a cross in the appropriate square to the right of

¹ FORM OF NOTICE OF VOTE ON CHANGE OF PLACE OF HOLDING TOWN MEETING.

To the Electors of the Town of —, in — County, Wisconsin:

COUNTY OF —, } ss.
Town of —, }

Notice is hereby given that the town board of said town has, by resolution, provided that the question of changing the place for holding the town meetings of said town be submitted to vote at the next regular town meeting thereof, to be held at —, in said town, on the first Tuesday of April, 190—; and that such board has, by resolution, designated — (here describe, in the language of the resolution, the place designated therein) as the place at which such meetings shall in the future be held if a majority of the ballots to be cast at the meeting on said first Tuesday in April shall be in favor of such place. The form of ballot to be cast at such election is described in section 2, chapter 338, laws of 1899.

Dated at —, this — day of —, 190—.

— — — — —, Town Clerk of said Town.

the words, "for changing the place of holding elections," and if he desires to vote against it, may do so by putting a cross in the square to the right of the words, "against changing the place for holding elections." Such ballots shall be delivered to the clerk, time enough for use at any such election, and shall be kept in some convenient and conspicuous place in the building where the election is held, for the use of electors. The votes so cast upon any such proposition shall be canvassed and returned in the same manner that votes for candidates are canvassed and returned, and if a majority of the votes so cast shall be in favor of changing the place of holding elections, then all general elections, town meetings and judicial elections thereafter held, shall be held at the place designated in the resolution adopted by the town board, and approved by the electors of the town as herein provided. The town board shall provide a separate box for the ballots cast upon any such proposition.

220. Vacation of town; form of ballot. [Sec. 671a, Statutes of 1898, created by sec. 1, ch. 253, laws of 1899.] When thirty or more freeholders, residents of any town, and at least one-third of the legal voters thereof, shall petition the county board for a vacation of such town, such petitioners shall at least twenty days before the next annual town meeting, file the copy of such petition with the clerk of such town, who shall at least ten days before such town meeting, give notice¹ that the question of the vacation of such town will be voted upon at such meeting, by posting the notice thereof in four public places in such town; the voting shall be by ballot and those voting in favor of the vacation shall vote a ballot containing the words "for vacation," and those voting against vacation, a ballot containing the words "against vacation."

¹ FORM OF NOTICE OF VOTE ON VACATION OF TOWN.

COUNTY OF —, } ss.
 Town of —, }

To the Electors of the Town of —, in the County of —, State of Wisconsin:

Whereas, thirty or more freeholders, residents of said town, and at least one-third of the legal voters thereof, have petitioned the county board of said county for the vacation of said town, and a copy of such petition has been filed in my office; now, therefore, notice is hereby given that the question of the vacation of such town will be voted upon at the annual town meeting to be held in such town on the first Tuesday of April, 190—, at —; that the vote on such question will be by ballot, those voting in favor thereof to vote a ballot containing the words "For vacation," and those voting against vacation, a ballot containing the words "Against vacation."

Dated this — day of —, 190—.

— —, Town Clerk of said Town.

If a majority of the votes cast shall be in favor of vacation, the town clerk shall certify the fact to the county clerk, and thereupon the county board shall have power to vacate such town accordingly.

221. Construction of free macadamized road; form of ballot; canvass of vote. [Chapter 352, laws of 1899, provides a method for the construction of free gravel, stone or other macadamized roads. Section 4 of said chapter provides:] All petitions filed under this act shall be voted upon at the annual, or any special, town meeting held in the towns so petitioning. A notice of the filing of such petition, and that it shall be voted upon at the next annual town meeting, or at a special town meeting, to be held in any such town, shall be published in at least one newspaper, printed and published within the county, and within which such town is situate, once each week for three successive weeks preceding the time of the holding of such town meeting, and copies of such notice shall be posted for the same time in at least three public places within such town, prior to the date of such town meeting. Such notice shall set forth the date of the filing of the petition, the highways sought to be improved, and the estimated cost of such proposed improvement as such cost is found and determined by the viewers, as hereinbefore set forth, and if more than one application is to be voted upon at any annual or special town meeting, all of such applications may be referred to and covered in the same notice, but each application shall be voted for separately and shall be designated in the notice and on the ballots hereinafter provided for, as "Application No. 1," "Application No. 2," etc. The ballots upon the question submitted shall contain the words "Application No. —," "For Building of Road," or "Against Building of Road."¹ Such ballots shall be deposited in a separate ballot-box in each voting precinct. The

¹ FORM OF NOTICE OF VOTE ON THE CONSTRUCTION OF FREE GRAVEL, STONE OR OTHER MACADAMIZED ROAD.

COUNTY OF —, { ss.
Town of —,

To the Electors of the Town of —, in the County of —, State of Wisconsin:
Whereas, fifty or more resident freeholders of said town have filed with the town clerk thereof, on the — day of —, 190—, their petition requesting the supervisors of said town to improve a certain highway therein (*describe the highway as it is described in the petition*) by (*state the manner of improvement in the petition proposed*), and whereas said supervisors have appointed viewers to examine such highway, make a profile of the grade thereof, and to determine the extent and character of the work to be done, and the character and quantity

vote on such question shall be canvassed by the town board in the same manner as votes on all other questions are canvassed, and if at such town meeting a majority of the votes on such question are in favor of building such road, or roads, the supervisors shall at once proceed to the construction of the same, but not otherwise.

222. Bonds for payment of road, question how submitted. [Section 6, ch. 352, laws of 1899.] At the time of filing the petition hereinbefore referred to, and as part thereof, the petitioners may request the supervisors of said town to submit to the voters thereof, at the annual or special town meeting at which such petition is to be voted on, the question of levying a tax or issuing the bonds of said town to raise money for the purpose of paying all or any part of the cost of said proposed improvement. Whenever such request is made, the supervisors shall include in the notice to be published prior to the holding of the annual or special town meeting at which such petition is to be voted on, a further notice that at such meeting the question of authorizing the execution, issuance and sale of the bonds of said town to raise money for the purpose aforesaid, will be voted upon by the electors assembled, and no such bonds shall be issued or sold unless authorized in the manner as set forth in section 777 of the revised statutes of the state of Wisconsin. * *

of the materials to be furnished and used, with an estimate of the cost of the construction and completion of the work proposed to be done, all of which are filed in the office of the clerk of said town, and which show that the estimated cost of such improvement, as found and determined by the viewers, is ——— dollars, now, therefore,

Notice is hereby given that such petition will be voted upon at the annual town meeting of said town to be held on the first Tuesday of April, 190— (or at a special town meeting to be held in said town on the ——— day of ——— 190—). [If more than one petition has been filed the notice should so state, give the state of the filing of each, describe the highway to which each relates, proceed as in the first paragraph of this form, and designate the several petitions as "Application No. 1," "Application No. 2," etc.; each such application must be voted upon separately]; that the ballots upon the question of so improving such highway must contain the words "Application No. —, for building of road," or "Against building of road," and that such ballots are to be deposited in a separate box.

[If the petitioners have requested the supervisors to submit to the voters the question of levying a tax or issuing bonds to raise money for the purpose of paying all or any part of the cost of said proposed improvement, the notice should also state that at such meeting the question of authorizing the execution, issuance and sale of the bonds of said town to raise money for such purpose will be voted upon by the electors.]

Dated at ———, this ——— day of ———, 190—.

Supervisors of the town of _____

Town Clerk of the Town of _____

223. Naming of farms; question, how put. [Sec. 1, ch. 343, laws of 1901.] The town clerk upon a petition signed by ten per cent. of the qualified electors of his town, filed with him at least thirty days before the annual town meeting, shall include in his notice of such meeting the following question to be voted on: "Shall the farms in this town be named?" The vote shall be taken by ballot. Those favoring the proposition shall vote "Yes" and those opposing "No."

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224. Reincorporation of villages under special law. [Sec. 852, Statutes of 1898.] Every village which has heretofore been incorporated under a special act shall continue to exist under such act and amendments thereto, and the provisions of this chapter shall in no manner affect or apply to the same unless adopted as provided herein or unless any provision found herein is made applicable to such villages. The trustees thereof may, by resolution, submit at a special village election to be held in the month of March the question whether such village will so continue or become reincorporated under the general statutes. They shall give notice thereof in the manner required in this chapter for notifying special elections. Ballots shall be written or printed "for reincorporation" and "against reincorporation," and the election shall be conducted and the result canvassed as provided for an annual village election in such village. If a majority vote for reincorporation the trustees shall make a certificate setting forth the fact of such submission, the vote thereon in detail and the result thereof, and cause the same to be recorded in the office of register of deeds, and thereupon the special act of incorporation shall be deemed surrendered, and such village become incorporated under the general statutes, but shall, until the next annual village election herein provided for, be governed by the officers then in office. The reincorporated village shall own the property and be liable for all the obligations of the original village.

Electors in villages. The constitution gives to every person residing in a village when any election for municipal officers is held and who has the qualifications of an elector specified in art. 3 the right to vote at such election: *State v. Tuttle*, 53 Wis. 45.

Village officers. The legislature has no power to appoint officers for any village and no power to give a voice in the election of such officers to electors outside of the village: *Cole v. Black River Falls*, 57 Wis. 110.

Villages independent corporations—Validity of chapter. Villages organized under ch. 40, R. S. 1878, were separate and independent cor-

porations; and a resident and elector of such a village could not vote for town officers of the town within the limits of which the territory comprising the village was formerly situated. That chapter was not so imperfect as to be void for uncertainty or obnoxious to any constitutional inhibition and did not violate the required uniformity in the system of town and county government: *Jones v. Kolb*, 56 Wis. 263. See paragraph 253.

225. Election of justices and constables in villages specially incorporated. [Sec. 852c, Statutes of 1898.] Every village so incorporated and which is not authorized to elect a justice of the peace, a police justice or constable shall, at its annual charter election, elect one justice of the peace and one constable in the manner prescribed by its charter for electing trustees. Every justice and constable so elected shall qualify in the manner prescribed for such officers elected in towns. The justice of the peace shall hold his office for two years and until his successor is elected and qualified; if a vacancy occurs it shall be filled at the next annual charter election. He shall have concurrent jurisdiction and powers throughout the county in which such village is situated with other justices of the peace, and exclusive original jurisdiction of all cases arising under the ordinance and by-laws of such village. If he is temporarily absent or incapacitated, or in case the office is vacant, any justice of the peace of the town in which such village is located may exercise the jurisdiction hereby conferred upon such village justice. The constable so elected shall hold his office for one year and exercise such powers and be subject to such liabilities as constables elected in towns.

INCORPORATION OF VILLAGES.

226. Area and population. [Sec. 854, Statutes of 1898.] Any part of any town or towns, not less than one-half square mile in area and not included in any village and all lying in the same county, which shall contain a resident population of not less than three hundred persons thereon, or any part of any town or towns, not less than one square mile in area and not included in any village and lying in two adjoining counties and which shall contain a resident population of at least four hundred persons to every square mile thereof, may, upon compliance with the conditions of this chapter, become incorporated as a village by such name as may be designated in the order of the court for its incorporation, with the ordinary powers of a

municipal corporation and such as are conferred by these statutes. All villages incorporated under the provisions of section 854 of the revised statutes of Wisconsin for 1878 before the twenty-ninth day of April, 1877, are declared to be duly and legally incorporated and the official acts of the officers thereof legalized.

In proceedings to incorporate certain territory into a village, it appeared from the certificate of the inspectors of the election that ninety-one votes were cast by the electors of the territory. The certificate further found and determined that upon a canvass of the votes cast, eighty ballots were given by the qualified electors resident in such territory, forty-four of which were in favor of incorporation. *Held*, in the absence of any showing to the contrary, that it will be presumed that the excess of votes over eighty were illegal and were properly rejected. In such case the majority of the ballots necessary under sec. 865, Stats. 1898, to determine the question of incorporation, must be construed to mean the majority of legal ballots cast on the question of incorporation: *State ex rel. Halland v. Lammers*, 113 Wis. 398.

227. Survey, map and census. [Sec. 855, Statutes of 1898.] The persons intending to make the application, as hereinafter provided, for the incorporation of such village shall cause to be made by a practical surveyor an accurate survey and map of the territory intended to be embraced within the limits of such village, showing the courses and distances of the boundaries and the quantity of land contained therein; the accuracy of both survey and map shall be verified by such surveyor's affidavit written thereon or annexed thereto. They shall also cause to be taken an accurate census of the resident population of such territory as it may be on some day not more than ten weeks previous to the time of making such application, exhibiting the name of every head of a family and the name of every person a resident in good faith of such territory on such day, and the lot or quarter section of land on which he resides, which shall be verified by the affidavit of the person taking the same affixed thereto.

228. Examination of papers. [Sec. 856, Statutes of 1898.] Such survey, map and census, when completed and verified as aforesaid, shall be left at the residence or place of business within such territory of some person residing therein, and there kept subject to examination at all reasonable hours by every person interested for a period of five weeks from the posting or first publication of the notice of such application as hereinafter provided.

229. Notice of application to court. [Sec. 857, Statutes of 1898.] The intending applicants shall give notice that they will apply on some day therein specified to the circuit court of the county in which such territory or a part thereof lies for an order incorporating such territory as a village by a name to be therein specified; and such notice shall describe the boundaries of such territory by courses and distances and specify the town or towns in which it lies and state where such survey, map and census have been left and may be examined as aforesaid.

230. Publication of notice. [Sec. 858, Statutes of 1898.] If there be a newspaper printed within such territory, such notice shall be printed therein once in each week for six consecutive weeks previous to the time specified for making such application, and if there be no such newspaper such notice shall be posted in at least three of the most public places in such territory at least six weeks before the time so specified in said notice.

231. Application, contents of, and signatures to. [Sec. 859, Statutes of 1898.] Such application shall be by petition, subscribed by the applicants, who shall not be less than five taxpayers and residents of such territory, and shall set forth the boundaries of such territory, with their courses and distances, the quantity of land therein embraced according to such survey, and the resident population therein contained according to such census; such survey, map and census and the affidavits verifying the same, and an affidavit that they were left and kept subject to examination as provided in section 856,¹ also a copy of the notice of application aforesaid, with an affidavit thereon or affixed thereto of the publication or posting of the same as hereinbefore provided, shall be annexed to such petition, otherwise it shall not be acted on by the court; and it shall be presented at the time specified in the notice for presenting the same or as soon thereafter as the applicants can be conveniently heard in respect thereto.

232. Hearing by court; costs. [Sec. 860, Statutes of 1898.] The court shall hear all parties interested for or against such application who shall seasonably appear; may in its discretion adjourn such hearing from time to time, direct a resurvey to be

¹Paragraph 228.

made or another census taken by whomsoever it shall appoint, and refer any question for examination and report thereon; and if the court shall, after such hearing, deny such application, it may, in its discretion, by order, compel the applicants to pay such disbursements or any part thereof as shall have been incurred by the parties opposing the same.

233. Order, what to be; inspectors of election. [Sec. 861, Statutes of 1898.] If the court, after such hearing, shall be satisfied of the correctness of any such survey or resurvey and census, that all the requirements of the statutes have been complied with, and that such territory as is proposed to be included contained, at the time such census was first or subsequently taken, the population in number and in proportion to the quantity of land therein required in section 7 of this act,¹ it shall make an order declaring that such territory, the boundaries of which shall be therein set forth by courses and distances, shall be an incorporated village by the name specified in such application, if the electors thereof shall assent thereto as hereinafter provided; and in such order it shall direct three persons of the town or towns in which such territory shall lie, to be named therein, to perform the duties of inspectors of election as required by this act; provided, that in case the order of incorporation as made by the court shall be irregularly or defectively entered the court or the presiding judge thereof may, at any time, sign and enter nunc pro tunc the proper order of incorporation, and the same may be recorded as herein provided within ten days after the actual signing of such order; and provided further, that any other irregularities or defects not going to the groundwork of the organization shall not be deemed to invalidate the incorporation of said village.

234. Notice of election. [Sec. 862, Statutes of 1898.] Such inspectors shall, without unnecessary delay, give notice of a meeting of the electors of the territory described in such order to be held within sixty days of the date of such order at some convenient place therein, to be specified in such notice, for the purpose of determining whether or not such territory shall be an incorporated village. At such meeting the polls shall be opened at ten o'clock in the forenoon and shall be kept open

¹ Paragraph 226.

till four o'clock in the afternoon, when they shall be closed; but such inspectors may close the polls at twelve o'clock noon for one hour, giving notice thereof. The time of opening and closing the polls shall be specified in the notice of such meeting.¹

235. Publication of notice. [Sec. 863, Statutes of 1898.] If there be a newspaper printed in such territory such notice shall be published therein once in each week for three successive weeks previous to such meeting; and if there be no newspaper so printed copies of such notice shall be posted in at least three of the most public places in such territory at least three weeks previous to such meeting.

Most public places. See note to paragraph 86.

236. Ballots; vacancy in election officers. [Sec. 864, Statutes of 1898.] Such inspectors shall preside and act as inspectors of election at such meeting, and may designate one of their number or some other person as clerk thereof. Every qualified elector resident in such territory may vote by ballot having thereon the word "yes" or the word "no." Vacancies in the board of inspectors shall be filled and such election shall be conducted and votes canvassed according to the statutes regulating town meetings; and all laws relating to elections for town officers shall apply to and govern such meeting and the proceedings thereof and the persons voting thereat so far as properly applicable and consistent with this chapter.

237. Village, when a corporation. [Sec. 865, Statutes of 1898, as amended by ch. 58, laws of 1905.] If a majority of

¹ FORM OF NOTICE OF MEETING TO DETERMINE QUESTION OF INCORPORATION AS A VILLAGE UNDER CHAPTER 40, STATUTES OF 1898.

County of —, } ss.
Town of —, }

Whereas, the circuit court of — county, Wisconsin, on the — day of —, 190—, after notice and hearing, made an order, subject to the assent of the electors residing on the territory herein described, for the incorporation of the following described territory (*describe the boundaries of the territory by courses and distances, and specify the town or towns in which it lies*) as a village under chapter 40, of the Wisconsin Statutes of 1898, and said order designated the undersigned, residents of said town (or towns), to act as inspectors of an election to be held for the purpose of determining whether or not such territory shall become an incorporated village; therefore, notice is hereby given to the electors resident on such territory that an election will be held on the — day of —, 190—, at — (*specify the place with particularity*) in the town of —, county of —, for the purpose of determining whether or not such territory shall be an incorporated village. The polls will be opened at ten o'clock in the forenoon and will close at four o'clock in the afternoon of said day.

Dated this — day of —, 190—,

A B,
C D,
E F,
Inspectors.

the ballots given at such meeting shall have thereon the word "no" the electors of such territory shall be deemed not to have assented to the incorporation thereof as a village, and no further proceedings shall be had in respect to such incorporation under such application and order; but if a majority of such ballots shall have thereon the word "yes" the inhabitants of such territory shall, from the time of the recording of the order of the court aforesaid in the office of the register of deeds, be deemed a body corporate by the name specified in such order, and the inspectors who shall have presided at such meeting shall cause a statement of the holding of such meeting to be made showing the whole number of ballots given thereat, the number having thereon the word "yes" and the number having thereon the word "no," which statement shall be verified by the affidavit of the said inspectors written thereon or annexed thereto, to be likewise recorded in the office of the register of deeds as hereinafter provided; provided further that if after any village shall have become a separate and independent municipality under the provisions of this chapter, there shall not remain, before the next ensuing judicial election or election for state or county superintendent or before any general election, time to comply with the provisions of any law relating to the holding of such judicial election or election for state or county superintendent or general election, then and in that event such village shall, for the purposes of such ensuing judicial election or election for state or county superintendent or general election, remain a part of the election district or districts to which the same was attached before said separation was had.

238. Filing and recording papers. [Sec. 866, Statutes of 1898.] The petition and all accompanying papers and all such as have been added under the direction of the court, the order of the court for incorporation and the statement and affidavit of the inspectors aforesaid shall be recorded at length by the register of deeds within ten days after such election, and be recorded at length in the office of the village clerk by him within thirty days after election and qualification. All necessary and proper expenses and charges attending upon the incorporation and such records thereof shall be paid by such village. A certified copy of the order of the court for the incorporation of the village, to which shall be added an affidavit of the inspectors of election that the said election resulted in

favor of the incorporation of such village, shall be filed in the office of the secretary of state.

ORGANIZATION OF NEWLY INCORPORATED VILLAGES.

239. Election of officers. [Sec. 867, Statutes of 1898.] Within ten days after the incorporation of such village as aforesaid the inspectors named in such order of the court shall give notice in the manner prescribed in section 863¹ of the time, which shall not be more than thirty days after the date of such notice, and place of a meeting of the electors of such village to elect officers thereof;² such meeting shall be held at some convenient place therein, to be specified in such notice; the polls shall be opened at ten o'clock in the forenoon and shall be closed at four o'clock in the afternoon of the same day, and the inspectors thereof may close the same for one hour at twelve o'clock noon, giving notice thereof. The time of opening and closing the polls shall be specified in the notice of such meeting, but a failure to so specify the time of opening and closing the polls shall not vitiate such election.

240. Election, how conducted. [Sec. 868, Statutes of 1898.] Such inspectors shall preside at such first election as inspectors thereof, and shall designate one of their number or some other person to act as clerk; and all the laws of the state in relation to the election of town officers and notification of their election shall apply to such first election so far as the same can be so applied and are consistent with this act; provided, that in case of vacancy in the office of inspector of elections the vacancy may be filled as now provided for in the case of inspectors of town meetings.

241. Canvass of votes. [Sec. 869, Statutes of 1898.] The inspectors of such first election shall canvass the votes given

¹ Paragraph 235.

* FORM OF NOTICE OF FIRST VILLAGE ELECTION.

Village Election.

Notice is hereby given that the first election of the village of _____, in the county of _____, Wisconsin, for the choice of village officers will be held at _____, (*specify the place*) in said village, on the _____ day of _____, 190—. The polls will be opened at ten o'clock in the forenoon and will be closed at four o'clock in the afternoon of said day.

Dated this _____ day of _____, 190—.

A B,
C D,
E F,
Inspectors.

thereat and shall make and subscribe a certificate¹ of such canvass, which shall show the whole number of votes given for each officer, the number given for each person voted for and the office for which each such person shall have been voted for. Such certificate shall be recorded in the records of such village and filed in the office of the clerk thereof.

ALTERATION OF BOUNDARIES.

242. How made. Ch. 78, laws of 1899, provides that the boundaries of any village incorporated under the general law may be altered by annexing "new contiguous territory, or by disconnecting territory within its limits, or by both annexing new contiguous territory and disconnecting territory within its limits;" but the boundaries of no village shall be altered unless such village shall, if the alteration be made, contain within its limits the area required by sec. 854, Statutes of 1898, and a resident population, after the alteration, required by that section. The act of 1899 provides how these facts are to be determined and shown to the circuit court, and authorizes the court to make the change under certain circumstances, and provides, section 9, among other things: But if no resolution shall have been passed by the board of trustees of such village consenting to such alteration or change or each owner of land to be annexed or disconnected shall not have consented to such alteration or change, then the order of the court shall direct a special election to be called by the trustees of such village as well as an election in such additional territory or disconnected territory by inspectors to be appointed by the court. If the majority of ballots in either the village or such territory shall have thereon the word "no" the alteration or change shall be void and no further action had under such application. But if the majority of the ballots in each be in the affirmative such boundaries shall be altered and changed from the time of recording such order of alteration or change with the register of deeds. The inspector of election on both the village and such territory shall make a similar statement to that required in section 865² of the Wisconsin statutes of 1898 and all proceedings shall be recorded as provided in said section 865. In all cases of an alteration or change of boundaries under the

¹ The form under paragraph 194 may readily be adapted to this section.

² Paragraph 237.

provisions of this act, like certificate and affidavit shall be filed in the office of the secretary of state as in the case of the incorporation of new villages.

**ANNUAL ELECTION IN VILLAGES ORGANIZED UNDER THE
GENERAL LAW.**

243. When held; notice of; special elections. [Sec. 871, Statutes of 1898.] The annual charter election shall be held on the first Tuesday of April in each year. Ten days' notice thereof shall be given by the clerk by publication in any newspaper regularly published in such village, and if there be no such newspaper then by posting three printed or written notices thereof in three public places therein; but the omission thereof shall vitiate no such election. Special elections may be held when ordered by a majority of the village board specifying the objects thereof, provided ten days' notice, specifying the time and place for holding the same and the objects thereof, be given as above provided. Such notice may, in either case, be given by any five electors if there be no officer to give the same; provided, that the term of office of all officers, except justices of the peace, in any village which shall, prior to the passage of this act, have held its annual meeting on the first Tuesday in May, shall expire upon the qualification of their respective successors; provided, that in any village in which the charter election is now held in May, such village shall, in May, 1897, hold its election as heretofore, and the term of office of officers elected at such election shall expire as though the election had been held on the first Tuesday in April.

244. Where and how held; officers. [Sec. 872, Statutes of 1898.] Every election shall be held at a place designated by the village board, and the polls shall be open at ten o'clock in the forenoon and kept open until four o'clock in the afternoon, when they shall be closed; provided, that the village board may, by resolutions adopted and published in some newspaper published in the village, and if there be no such newspaper, then, by posting notices of its action in five public places in the village at least ten days before election, fix an hour not earlier than seven o'clock in the forenoon for the opening of the polls and an hour not later than six o'clock in the afternoon for closing the polls; but the inspectors may close the polls one

hour at noon, giving notice thereof. The inspectors shall be any three trustees, or if there be not three present and consenting to act at the opening of the polls the electors present may choose from among themselves such number to fill vacancies as will complete a board of three. The president of the village, if present, shall be chairman of the board of inspectors; in his absence the board shall designate one of their number to act as chairman. The village clerk shall be clerk of the election, but in his absence the board may appoint another person clerk. Each inspector and clerk shall take the oath or affirmation¹ required of inspectors and clerks of general elections.

245. Ballot; tie vote; who may vote. [Sec. 873, Statutes of 1898.] All elections shall be by ballot, and all votes for elective officers at any election shall be upon one ballot and be deposited in one ballot box. A plurality of votes shall elect; and if two or more persons receive an equal number of votes for the same office the election shall be forthwith determined by lot in the presence of the inspectors in such manner as they shall direct. Every qualified elector than actually resident in such village may vote at any election.

Determined by lot. See notes to paragraphs 3, 207.

Qualified electors. See notes to paragraphs 1, 75, 76.

246. Other statutes applicable. [Sec. 874, Statutes of 1898.] All village elections shall be, except as hereinbefore provided, conducted and the result canvassed and certified as in the case of town meetings and except as modified by this act. Every statute relating to holding town meetings, canvassing and certifying the result thereof, and relating or applicable to the duties of inspectors and clerks, the challenging of votes and to voting thereat, and every statute prescribing and punishing offenses for illegal voting, bribery, fraud, deceit, corruption, official delinquency or other offense at or concerning elections which is applicable to town meetings, is hereby extended and applied to village elections.

247. What officers to be elected. [Sec. 875, Statutes of 1898.] At the annual charter election in each village there shall be chosen the following officers, viz.: A president, six

¹ See form under paragraph 101.

trustees, a clerk, a treasurer, a supervisor, an assessor and a constable; also two justices of the peace and a police justice, if required to be elected in such year, unless such last named office shall have been discontinued. All other officers of villages organized under the provisions of this chapter or any general law shall be appointed by the village board at their first meeting after the annual election unless such board shall otherwise provide; and such officers shall be removable by such board on a vote of a majority of all the trustees. No person not a resident elector in such village shall be eligible to any office therein. The village clerk may appoint a deputy clerk for whom he shall be responsible, and who shall take and file the oath of office, and in case of the absence, sickness or other disability of the clerk may perform his duties and receive the same compensation unless the village board shall appoint a person to act as such clerk.

Choice of officers. Under the constitution (sec. 9, art. 13) it is not competent for the legislature to provide that the officers of the town within which a village is situated shall be the officers of the village. The latter must elect or appoint its own officers: *Cole v. Black River Falls*, 57 Wis. 110; *State v. Krez*, 88 id. 135.

248. Officers, when to be elected; terms. [Sec. 1, ch. 329, laws of 1901.] Villages that have a president and four or more trustees shall elect them as follows: The president shall be elected annually. On the first Tuesday in April, 1902, one-half of the trustees shall be elected for a term of one year and one-half of the trustees shall be elected for a term of two years and each year thereafter one-half of the trustees shall be elected for a term of two years; provided that in villages having an odd number of trustees, the village board shall by ordinance determine the number to be elected in 1902 for a term of one year and the number to be elected for a term of two years, which number shall be one-half the number of said body as near as may be. Annually thereafter the trustees of said villages shall be elected for two years, except elections to fill vacancies, which shall be for the unexpired term.

249. Alterations in boundaries. [Ch. 78, laws of 1899, authorizes the alteration and change of the boundaries of villages incorporated under the general law, by petition to the circuit court.]

MISCELLANEOUS.

250. Vote on discontinuance of offices. [Sec. 920, Statutes of 1898.] The village board may by ordinance submit to the electors of any village the question whether they will discontinue either the office of police justice, marshal or constable in such village at an annual or special election. The ballots shall read, "for discontinuance of (office named)," or "against discontinuance of (—)," and shall be deposited in a separate box, canvassed and the result stated and certified as in other elections. If a majority be for such discontinuance the village board shall cause the vote to be recorded accordingly; and thereupon all parts of this chapter provided for such officer shall be inoperative in such village.

250a. Salaries of offices. [Sec. 890, Statutes of 1898, as amended by ch. 44, laws of 1905.] The trustees of each village shall constitute a board designated "The village board of," name of village, in which shall be vested all the powers of the village not specifically given some other officer. Four trustees shall constitute a quorum, but a less number may adjourn from time to time. The president shall preside at all meetings, when present. In his absence the board may select another trustee to preside. Regular meetings shall be held at such times as may be prescribed by their by-laws. Special meetings may be called by any two trustees in writing, filed with the clerk, who shall thereupon seasonably notify all the trustees of the time and place thereof in the manner directed by the by-laws. All meetings shall be open to the public. The board shall keep a record of all its proceedings, shall have power to preserve order at its meetings, compel attendance of trustees and punish non-attendance, and it shall be judge of the election and qualification of its members. The president and board of trustees may by resolution determine that an annual salary be paid the president and trustees after the next election. The question whether the provisions of such resolution shall take effect and be in force, shall be submitted to the people of said villages at the next annual election. Upon the ballot or in the voting machine shall be printed: "Shall the president of the village board be paid \$—— and shall the trustees of the village board be paid \$—— salary per annum." (The blank spaces to contain the appropriate figures taken from the resolution.) Space shall be provided upon the ballot

or voting machine to vote yes or no upon such question. If approved by a majority of the votes cast upon the question it shall go into effect and be in force immediately after such election.

251. Dissolution of villages. [Sec. 924, Statutes of 1898.] Whenever an application in writing, signed by one-third as many electors of any village incorporated by special act or under the general statutes as voted for village officers at the next preceding election therefor, shall be presented to the village board praying for dissolution of the village corporation, such board shall submit to the electors of such village, at a general election or at a special election called by them for that purpose, the question whether or not such village corporation shall be dissolved. The form of the ballot shall be "for dissolution," or "against dissolution;" such ballots shall be deposited in a separate box, and such election shall be conducted, the votes canvassed and statement thereof made, filed and recorded as in other cases.

252. Vote necessary. [Part of sec. 925, Statutes of 1898.] If two-thirds of the ballots cast at such election on such proposition shall be for dissolution such village shall, at the expiration of six months from the date of such election, cease to be an incorporated village; * * * * * and in case of such dissolution the territory embraced in the village shall revert to and become part of the town or towns from which it was taken or in which it is then located.

253. Villages are separate election districts. [Sec. 925h, Statutes of 1898.] All villages hereafter organized under the provisions of this chapter and all villages heretofore organized under any general or special law and all villages the incorporation of which shall be rendered valid by section 853a¹ shall

¹ Sec. 853a, Statutes of 1898, is as follows: *Section 853a.* All villages heretofore incorporated under and by virtue of any general act, particularly under the provisions of chapter 52 of the revised statutes of 1849, chapter 70 of the revised statutes of 1858, or chapter 40 of the revised statutes of 1878, and all acts amendatory thereof, and all villages organized under special laws which have heretofore attempted to reorganize under any general law of this state, including the acts above particularly referred to, or which have organized under such attempted incorporation and have acted as villages in attempted pursuance of the acts mentioned or any general law of this state, and all alterations of their boundaries and additions thereto, are hereby declared to be, and to have been, duly and lawfully incorporated, made or adopted, and such villages shall possess, and there is hereby conferred upon them, with such enlarged or diminished boundaries, all of the franchises, rights, powers, privileges and immunities conferred by any of the acts above mentioned to the same extent as though the said acts had been fully and completely valid. All villages attempted to be or-

be separate and independent municipalities and shall constitute separate election districts within the meaning of the statutes relating to general elections.

254. Villages become cities, when; first city election. [Sec. 925*g*, Statutes of 1898.] Whenever the population of any village shall exceed fifteen hundred as shown by the last national or state census such village shall become a city of the fourth class, and the trustees of such village shall at a regular meeting, by ordinance or resolution, make publication thereof, and shall in such resolution fix the number and boundary [boundaries] of the wards into which such city shall be divided and fix the time for holding the first city election, which shall not be less than twenty days from the date of such resolution, and shall therein name three inspectors and one clerk of election for each ward. The polls of such election shall be opened at six o'clock in the forenoon and closed at five o'clock in the afternoon. Ten days' previous notice of the time and place of such election and of the officers to be elected shall be given by the village clerk by publication in some newspaper published in such village, if there be one; and if there be none, then in some newspaper published in the county and by posting such notice in three public places in said village. The election shall be conducted and the result canvassed and certified as in the case of town meetings, and such result shall be filed in the office of the village clerk, and such clerk shall immediately certify the fact of holding such election to the secretary of state; and thereupon a patent shall be issued to such city as provided in sections 925—5, 926—12 and 925—13. Thereafter

ganized under any of the said acts, but whose organization shall, for any reason, have been incomplete, imperfect or informal, but which have acted as villages under said laws, are also declared to be municipal corporations to the same extent as the villages hereinbefore mentioned, and to have all the powers, privileges, franchises and immunities aforesaid. All and singular the acts of said villages, whether made or taken by the electors or taxpayers thereof, or the villages board or officers, are to such extent hereby legalized, ratified and confirmed. All contracts, bonds, grants, conveyances, and obligations made or entered into by the said villages are hereby ratified and confirmed to the extent that the same would have been of force had the said acts of the legislature been valid and said organizations regular. All conveyances and grants made to said villages are also declared to be valid, and are to the same extent, ratified and confirmed. The action of all officers of the said villages, judicial, ministerial or otherwise, are hereby declared valid to the same extent. All duties, obligations and liabilities assumed by any of the said villages and all causes of action existing against them are hereby declared valid and efficient to the like extent. All ordinances, regulations, rules, resolutions, by-laws and other acts, legislative or otherwise, of any such villages, are hereby declared valid to the extent above mentioned. And in all other respects, whether herein mentioned or referred to or not, the said villages are deemed to be and to have been lawfully incorporated and organized, having the same rights, powers, duties, obligations and liabilities as if the same had been lawfully incorporated and organized as aforesaid."

such city shall in all things be governed by the general city charter law. All debts, obligations and liabilities existing against such village at the time of such change shall continue and become like debts, obligations and liabilities against such city, and such city may carry out and complete all proceedings then pending for the issue of bonds for improvements therein.

PART XIV.

ELECTIONS IN CITIES UNDER THE GENERAL LAW.

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PRELIMINARY TO INCORPORATION.

255. Classification of cities. [Sec. 925—1, Statutes of 1898.] For the exercise of the corporate powers herein mentioned the cities of this state now existing or that may be created under the provisions of this chapter¹ shall be divided into classes as follows: Cities containing a population of one hundred and fifty thousand or over shall constitute the first class; cities containing a population of forty thousand or over and under one hundred and fifty thousand, the second class; cities containing ten thousand or over and under forty thousand, the third class; cities containing less than ten thousand, the fourth class. The population, as affecting the class to which any city shall belong, shall be determined by the last national or state census, unless a census is taken under the direction of the trustees of a village seeking to be incorporated as a city under the provisions of this chapter, or under the direction of the board of a town which contains an unincorporated village which, alone or in connection with adjacent territory, seeks to become so incorporated, or of the common council of any city now incorporated seeking to adopt such provisions for its government. Any city incorporated hereunder shall pass from one class to another when it has sufficient population and its common council shall by ordinance or resolution make publication thereof and make proper provisions for such change in the city government. Cities under special charters shall be divided into like classes, determined in the same manner.

256. Population required for a city. [Sec. 925—7, Statutes of 1898.] Any district containing a population of fifteen hundred or over and not heretofore incorporated as a city may become incorporated under this chapter in the manner hereinafter specified.

257. Petition by electors of village. [Sec. 925—8, Statutes of 1898.] One hundred or more electors and taxpayers of any village, incorporated or unincorporated, may apply by petition to the trustees of such village or to the proper town board to have the question of incorporating said village, or the same and adjacent territory, containing together a population of not less than fifteen hundred, as a city, submitted to a vote of the

¹ Ch. 404, Statutes of 1898.

electors of the territory described in such petition; provided, that in case it is proposed to include territory adjacent to such village the consent in writing of a majority of the electors residing therein, and the owners of at least one-third of the taxable property in such territory according to the last assessment roll, shall be presented with said petition.

258. How question submitted. [Sec. 925—9, Statutes of 1898.] At any regular meeting after the filing of said petition the trustees of such village or the board of such town, may, by resolution, provide that the question of incorporating as a city in accordance with such petition be submitted to a vote of the electors residing within the limits of said proposed city. Such resolution shall determine the number and boundaries of wards into which the city shall be divided, fix the time of voting on the proposition for incorporation, which shall not be earlier than six weeks from the adoption of such resolution, and where the electors residing outside the limits of said village shall vote; and shall also provide for a census unless it is proposed to have the city classified according to the last census taken under the laws of the United States or of this state. Said census, if ordered, shall be taken as provided by law for taking the census in case of the incorporation of villages.

259. Notice of election. [Sec. 925—10, Statutes of 1898.] Notice of the election on the proposition for incorporation shall be given by publication of a copy of such resolution in some newspaper published in said village, if there be one, otherwise in some newspaper designated in the resolution, once each week for four successive weeks immediately preceding the date for holding such election.

260. Election, how conducted. [Sec. 925—11, Statutes of 1898.] The election shall be conducted in the same manner as elections for village trustees, and the form of the ballot shall be "for a city charter" or "against a city charter."

Form of ballot. The words on the ballots must be substantially such as the law prescribes. *People v. Hansen*, 36 N. E. Rep. 998, 150 Ill. 122.

261. Return of result. [Sec. 925—12, Statutes of 1898.] The result of the election as canvassed by the inspectors shall be returned to the clerk of such village, if it be incorporated,

otherwise to the clerk of such town. If a majority of the votes are cast in favor of the city charter said clerk shall certify the fact to the secretary of state, together with the result of the census taken, if any, and thereupon a patent shall be issued as provided in section 925—5, which shall specify the number and boundaries of the wards of such city.

FIRST ELECTION.

262. When held; notice; how conducted; canvass. [Sec. 925—16, Statutes of 1898.] Within ten days after the incorporation of any city under this chapter the village board or the town board shall fix a time for the first municipal election, designate the place or places where the same shall be held and appoint three inspectors of election for each polling place. The polls of such election shall be opened at six o'clock A. M. and closed at six o'clock P. M.; ten days' previous notice of the time and place of election and of the officers to be elected shall be given by the proper village or town clerk by publication in some newspaper in the county, if there be one, and by posting written or printed notices in three public places in said city. In all other respects such election shall be conducted as is prescribed by chapter 5,¹ except that no registration of voters shall be required; but the failure to give such notice shall in no way invalidate said election. At the close of such election the inspectors shall count the ballots and make returns thereof, stating therein the number of votes for each office, and deliver such returns to the village or town clerk, who shall lay the same before the village or town board. Such board shall meet within one week after such election, canvass said returns and declare the result; the village or town clerk shall notify the persons elected to the respective offices and issue the proper certificates of election. All officers chosen at such election or appointed by the mayor-elect, except justices of the peace and aldermen, shall hold for a term ending on the third Tuesday of April next following and until their successors are elected and qualified; provided, that in case the first Tuesday of April shall be fixed as the time of the first election the term of office of the several officers chosen shall commence on the third Tuesday of April succeeding and continue as otherwise provided in this chapter.

¹ Chapter 5, Statutes of 1898, is in parts 2 and 3 of this compilation.

ANNUAL AND SPECIAL ELECTIONS.

263. Vacancies caused by change of ward boundaries, how filled. [Sec. 925—14, amended by sec. 1, ch. 36, laws of 1901, by adding thereto the following:] Whenever the number of wards in any such city of the first class shall be changed in the manner aforesaid, and a new ward or wards created, such ward or wards shall have the same number of aldermen, supervisors, and ward officers as other wards in such city, and shall be in all respects subject to the provisions of the charter of such city. Any alderman or ward officer holding office and who resided in any such territory at the time it shall be declared a ward, shall continue in such office for the term for which he was elected and until his successor is elected and qualified, and shall be an officer of the ward so created. The inspectors of election and ballot clerks appointed for any such district shall continue to act in their several capacities when such district is constituted a ward, until removed or their successors are appointed. In all other cases where a new ward is so created or old wards consolidated, and the creation or consolidation shall cause vacancies in the offices to which any ward, by reason of the formation, is entitled, the common council shall forthwith order in the manner provided by the charter of such city, a special election to fill all such vacancies as are by the charter of such city elective, provided that if any such ward is created within thirty days before any general or municipal election, such vacancies shall be filled thereat. All other vacancies shall be filled in the manner provided by the charter of such city. The common council shall in ordering such election, fix the term for which the officers shall be elected.

264. Officers of cities of first class. [Sec. 925—22, Statutes of 1898.] Officers of cities of the first class shall be a mayor, two aldermen from each ward, constituting a common council, a treasurer, comptroller, attorney, clerk, engineer, tax commissioner, an assessor for each ward, a board of public works, a school board, a board of commissioners of the public debt, a board of health, one or more city physicians, a chief of police, a chief engineer of the fire department, one or more harbor-masters where required, a supervisor for each ward, a justice of the peace and one constable for each ward, police-

men, bridge-tenders, firemen, street commissioners and such other officers as the council from time to time deem necessary.

265. Officers of other cities. [Sec. 925—23, Statutes of 1898, as amended by sec. 1, ch. 60, laws of 1901.] The officers of cities of the second, third and fourth classes shall be a mayor, treasurer, clerk, comptroller, attorney, assessor or one or more assessors,¹ two or more justices of the peace, one or more constables as the common council may determine by ordinance, a physician, street commissioner, chief of the fire department, a board of public works, a board of school commissioners, one or more policemen, two aldermen² and one supervisor from each ward, and such other officers or boards as the common council may deem necessary; provided, that the council, by a two-thirds vote, may dispense with the offices of street commissioner, engineer, comptroller and board of public works, and provided that the duties thereof be performed by other officers or boards by the council or a committee thereof.

266. Annual election. [Sec. 925—24, Statutes of 1898.] The annual municipal election in all cities shall be held on the first Tuesday in April at such place or places as the council shall designate; provided, that in cities of the fourth class the council, by ordinance duly adopted by a three-fourths vote of all the members-elect, may fix as the time of holding such election the first Tuesday in March. The polls at such election shall be opened at six o'clock A. M. and closed at five o'clock P. M. Ten days' previous notice of the time and place of such election and of the officers to be elected shall be given by the city clerk by publication in the official city paper and by posting written or printed notices in three public places in the city; but the failure to give such notice shall not invalidate such election. In all other respects such election shall be conducted as prescribed by chapter 5,³ except that no registration of voters shall be required unless provided for by ordinance.

¹ See sec. 1, ch. 396, laws of 1901, for fourth class cities incorporated by special act.

² Section 1, ch. 92, laws of 1905. In all cities of this state of the second, third and fourth class, whether governed by general or special charter, or by both, the common council may, by ordinance, provide that there shall be one or two aldermen from each ward, and shall determine the time and manner of their election; provided, however, that said ordinance shall not take effect until the same is submitted to and approved by a majority of the voters voting thereon at a general municipal election.

³ Chapter 5, Statutes of 1898, constitutes parts 2 and 3 of this compilation.

267. Officers, how chosen. [Sec. 925—25, Statutes of 1898. as amended by sec. 2, ch. 60, laws of 1901, and ch. 215, laws of 1905.] The mayor, treasurer, comptroller, assessor or assessors, aldermen, justices of the peace, one or more constables and supervisors shall be elected by the people. The other officers may be appointed by the mayor or elected by the council, as shall be determined by ordinance; provided, that in case any such officer, except policeman, shall be appointed by the mayor, such appointment shall be subject to confirmation by the council. In cities of the fourth class the clerk and any and all other officers, in addition to those hereinbefore specified, may be elected by the electors at the same time and in the same manner as other officers are elected, upon a petition asking therefor being filed in the office of the of the city clerk fifteen days prior to any regular municipal election, signed by a majority of the electors of such city who voted at the last general election then next preceding, as appears from the poll list. And it shall be the duty of the council and the proper officers of any city of the fourth class, to give notice of, call for and order the election at the next election and thereafter at each succeeding election, the officer or officers whose title of office is specified in such petition. Such petition may include one or more or all the officers of such city, and the notice of and the order for the election shall follow and include the officer or officers named in the petition, and upon like petition signed by a majority of the electors asking therefor, any common council, by ordinance duly passed, may provide for the appointment by the mayor, with the concurrence of the council, of any officers of such city excepting the offices of mayor, alderman, assessors, treasurer, supervisor or justice of the peace, provided that the city clerk in every city adopting this sub-section shall be chosen in the manner in force in such city at the time of adopting the same, unless the common council in such city shall provide by ordinance for an election by the people to such office.

Signed by a majority of the electors. A petition is insufficient unless it is signed by a majority of those whose names appear on the poll list of the last preceding general election as voting at such election. *Bush v. State*, 100 Wis. 549.

268. Terms for which elected. [Sec. 925—26, Statutes of 1898.] All officers shall hold their offices respectively for the term of one year, except justices of the peace and aldermen, who shall hold for two years and until their successors are

qualified, unless the council shall, by ordinance, provide a longer term for said officers or any of them, or unless a different term of office is expressly provided in this chapter; provided, that this section shall not extend the terms of any city officers beyond the terms for which they were originally elected or appointed. The common council may provide that the terms of the aldermen first elected after the adoption of this provision shall expire in different years, and thereafter part of the aldermen shall be elected each year and hold for the full term.

[Sec. 1, ch. 233, laws of 1905.] In cities of the second, third and fourth classes, the terms of office of all city officers hereafter chosen by the electors, except aldermen of cities governed by special charter, shall be two years; and also except supervisors, who shall be elected annually, and their term of office shall be for one year, unless otherwise provided for in cities operating under special charters, provided this act shall not affect the term of office of any city officer which exceeds two years.

269. Who not eligible. [Sec. 925—27, Statutes of 1898.] No person shall be eligible to an office created by the provisions of this chapter who is not at the time of his election a citizen of the United States and of this state and a resident elector of the city; nor shall any person be eligible to any ward office unless he shall be at the time a resident elector of the ward in which such office exists.

A person who was an alien when elected to office may yet hold it if otherwise qualified and his disability is removed before the commencement of his term. The same rule applies to a minor or one who had not resided one year in the state when elected: *State v. Murray*, 28 Wis. 96. So also, an alien elected to an office in a city whose charter provides that if officers fail to qualify within ten days after the commencement of the term their offices may be declared vacant, may hold his office if his disability is removed and he qualifies within the ten days: *State v. Trumpf*, 50 Wis. 103.

The charter of Milwaukee provides that eligibility to the office of health commissioner shall consist of a continuous residence for one year prior to appointment. The word "residence" was held to be used in the broad sense of domicile requisite to citizenship. The incumbent had had a domicile in the city for some years, and resided there continuously except when absent on business of the government. Held, a resident within the meaning of the charter: *Kempster v. Milwaukee*, — Wis. —, 72 N. W. Rep. 743.

270. Elections, how held; tie vote. [Sec. 925—29, Statutes of 1898.] All elections shall be by ballot and a plurality of

votes cast shall constitute an election. When two or more candidates shall receive an equal number of votes for the same office the election shall be determined by the casting of lots in the presence of the council at such time and in such manner as such council shall direct.

By ballot. See note to paragraph 3.

Casting lots. See notes to paragraphs 3, 207.

270a. Election of police justice. [Sec. 925—61, Statutes of 1898, as amended by ch. 223, laws of 1905.] In every city which shall adopt this chapter for its government and which shall at the time of such adoption have a court or judge, by whatsoever name or title such court or judge shall be called, having the jurisdiction herein conferred upon police courts, the jurisdiction and procedure of such court or judge shall continue unaffected by this chapter until such court or the office of such judge shall be abolished, and in the meantime no police justice shall be elected and no police court established in such city under this chapter. In every other city governed by this chapter a police justice shall be elected every fourth year as other city officers are elected; his term of office shall commence the first day of May succeeding his election and continue for four years and until his successor shall have qualified; provided, that in cities of the third and fourth classes the council may, by ordinance, abolish the police court therein, and thereupon the jurisdiction herein conferred upon such court shall be exercised by the municipal court or courts of the city or county located in such city, if there be any such, and if there be none, then by the justices of the peace of the city.

270b. School board, first class cities. [Sec. 1, ch. 273, laws of 1905.] The public schools in every city of the first class, whether organized under general or special charter, shall be under the general management, control and supervision of a board of school directors, consisting of twelve members from the city at large, selected as provided in this act. No person holding any office in any political organization, or any lucrative city, county or state office, other than a judicial office or that of notary public, shall be eligible to be a member of such board of school directors. The members of every such board of school directors shall, before entering upon the duties of such office, take and subscribe the oath of office prescribed in

the constitution of this state, and shall file the same, duly certified by the officer administering the same with the city clerk.

270c. Election of. [Sec. 2, ch. 273, laws of 1905.] The board of school directors of cities of the first class in Wisconsin shall consist of twelve (12) members, who shall be qualified voters of such city, who shall be elected as hereinafter provided at a school election to be held biennially on the first Tuesday in April, the first election under this act to be held on the first Tuesday in April, 1907. The school election shall be held at the same time and place and under the charge of the same election officials as the election of judges or other officers held on the same date; but, unless the voting is by voting machines separate ballot boxes shall be provided to receive the ballots for members of the board of school directors, which ballots shall be prepared and supplied to the election officials in the same way as other ballots are provided and supplied for other elections. At such school elections the candidates receiving the greatest number of votes for the several positions shall be declared elected.

270d. Appointment of in first instance; vacancies. [Sec. 3, ch. 273, laws of 1905.] Before the first day of July next following the date when this act shall become effective in any city, the circuit judges of the judicial circuit in which such city is situated shall meet, and shall appoint twelve (12) members of the board of school directors, four of these members to serve for a period of two (2) years from the next following first Tuesday in July, four to serve for a period of four (4) years from the next following first Tuesday in July and four to serve for a period of six (6) years from next following first Tuesday in July; and at the school elections to be held on the first Tuesday in April preceding the expiration of the terms of these members so appointed, their successors shall be elected by the qualified voters of such city to serve for the term of six (6) years or until their successors are elected and qualified. All vacancies in the said board of school directors caused by resignation, removal, death, or resulting from any cause, shall be filled by the board, a majority vote of the remaining members being necessary to a choice. Members so elected by the board shall serve until the first Tuesday of July following the next school election, at which election the vacancies shall be filled for unexpired terms in the same manner as members are elected for a full term. Provided, that the members of boards

of school directors in office when this act becomes effective in any such city shall hold their offices until the next following first Tuesday in July, and during such period shall continue to exercise all the rights and privileges and discharge the duties devolving upon members of board of school directors under the provisions of this act.

270e. Nomination of candidates for. [Sec. 4, ch. 273, laws of 1905.] The nomination of candidates to be voted for as members of the board of school directors shall be by petition, and any person on whose behalf a petition shall be presented to the proper officials not less than ten days before the date of such school election, signed by not less than five hundred qualified voters of the city, shall be entitled to have his name placed upon the ballot to be voted for as a member of such board of school directors. Nominations for members of such board shall not be under any party designation but shall be "for member of the board of school directors for the full term" or "for member of the board of school directors for two years, to fill vacancy," etc.

270f. Not to affect appointments already made; vacancies. [Sec. 20, ch. 273, laws of 1905.] This act is not intended to affect the term of office of any person now serving in any capacity by virtue of an appointment heretofore made by the school board in any such city, but such officer shall continue to serve in the same capacity under the board of school directors hereby created for the term for which he was so appointed; subject, nevertheless, to be removed from such office for the causes and in the manner mentioned in this act. Any vacancy for any cause occurring in any office, subject to the provisions of this act, shall be filled by appointment for the unexpired term.¹

271. Special elections. [Sec. 925—32, Statutes of 1898.] Special elections to fill vacancies or for any other purpose shall be held and conducted by the inspectors and clerks of election of the several election precincts in the same manner and the returns thereof shall be made in the same form and manner as

¹ Section 21, ch. 223, laws of 1905. This act is amendatory of the charters of the various cities to which it applies or may hereafter become applicable, and any provision of said charters inconsistent herewith is hereby modified, amended or repealed by this act to the extent necessary to give full force and effect to the intent hereof. All acts or parts of acts contravening the provisions of this act are hereby repealed.

of the general municipal elections, and within such time as is prescribed by law.

272. Canvass of votes. [Sec. 925—268, Statutes of 1898.] The council of each city shall meet on or before the second Tuesday of April in each year and proceed to canvass and declare the result of the annual municipal election.

Proper canvass presumed, when. Where election of persons to a public office was duly certified by the proper city officers, it must be presumed that a proper canvass of the vote was had: *State ex rel. McCole v. Kersten* (Wis.), 95 N. W. 120.

273. No appointment to fill vacancy to be made prior to judicial election in first class cities. [Sec. 1, ch. 58, laws of 1901.] No appointment to fill a vacancy in an elective office in any city of the first class operating either under a general law or special charter, which appointment shall be made prior to any special election for municipal officers or prior to any judicial election shall be valid beyond the date of holding such special or such judicial election, and such office shall be deemed vacant after the date of either such election and shall be filled in the manner hereinafter provided.

274. Election to fill vacancy, when. [Sec. 2, ch. 58, laws of 1901.] In case of any vacancy in any elective office in any such city as is described in section 1 hereof, or in case of any appointment to fill an elective office in any such city, such vacancy shall be filled and election shall be held for any such office whether the same shall have been filled by appointment or not, at a special election to be held therefor at the time of the first special election for municipal officers or at the time of the first judicial election held in any such city after such vacancy shall occur or appointment be made; and the person or persons so elected to fill any such vacancy shall hold their respective offices until the next general municipal election.

PART XV.

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LOCAL OPTION.

276. **Petition for vote; notice of election; canvass.** [Sec. 1565a, Statutes of 1898.] Whenever a number of the qualified electors of any town, village or city equal to or more than ten per centum of the number of votes cast therein for governor at the last general election shall present to the clerk thereof a pe-

tition in writing, signed by them, praying that the electors thereof may have submitted to them the question whether or not any person shall be licensed to deal or traffic in any spirituous, malt or intoxicating liquors or drinks as a beverage, such clerk shall forthwith make an order providing that such question shall be so submitted on the first Tuesday of April next succeeding the date of such order. The city clerk making such order shall give notice of the election to be held on such question in the manner notice is given of the regular city election; town and village clerks who make such orders shall give such notice by posting written or printed notices in at least five public places in the town or village not less than ten days before the day of election, if such petition is then filed, and if it is not so filed such notices shall be posted within twenty-four hours after it shall be filed. The election on such question shall be held and conducted and the returns canvassed in the manner in which elections in such city, town or village on other questions are conducted and the returns thereof canvassed. The result shall be certified by the canvassers immediately upon the determination thereof, and be entered upon the records of the town, village or city, and shall remain in effect until another election is held for the same purpose.

Notice of election. Where sample ballots on the question of local option to be voted on at a town meeting were mailed to every elector of the town, and several public meetings were held to discuss the question, notices of which meetings were published in a newspaper in the town, and circulars for and against such question were freely distributed, and more votes thereon were cast than for any candidate for office, the court refused to declare the election void because notices of it were not posted in four public places nor published in a newspaper as the law required. Some stress is placed by the court on the fact that the town in which the election was held was a no-license town. *In re Rowley*, 70 N. Y. Supp. 208.

277. Ballots; separate boxes. [Sec. 1565b, Statutes of 1898.] The ballots upon the question so submitted shall be deposited in a separate ballot-box in each town and election district and shall contain the words "for license" or "against license." If a majority of the ballots cast upon such question be against license then it shall be unlawful for any person to vend, sell, deal or traffic in any spirituous, malt or intoxicating liquors or drinks in any quantity whatever in the town, village or city so voting against license; and any license granted or issued therein, so long as the result of such election shall remain un-

reversed by another election held for the same purpose, shall be void. But if a majority of the ballots so cast shall be for license it shall be lawful for the town board, village trustees or common council, as the case may be, to grant license for the sale of such liquors or drinks as provided in this chapter.

Separate box. See note to paragraph 163.

Pharmacists not affected. Sec. 1565c, Statutes of 1898, provides that nothing in the two preceding sections "shall be construed as affecting the sale of liquors for medicinal, mechanical or scientific purposes only by registered pharmacists as provided in section 1548a."

AMOUNT OF LIQUOR LICENSE FEE.

278. Special election to fix, how noticed and conducted. [Sec. 1548b, Statutes of 1898.] The electors of the several cities, villages and towns may hold special elections for the purpose of determining the amount to be paid therein for license to sell strong, spirituous, malt, ardent or intoxicating liquors to be drank on the premises; and for that purpose the clerk thereof, on a request being made to him in writing signed by at least twelve qualified voters of such city, village or town and specifying the purpose for which such election is to be held, shall forthwith give notice of a special election for that purpose by publishing notice thereof in some newspaper published therein at least ten days before the day of election; if no newspaper shall be so published notice shall be given for such time by posting notices thereof in three public places in such city, village or town; provided, that such election shall be held on the third Tuesday of September, that no other question shall be submitted to the electors at the same time and that no such election shall be held oftener than once in three years. Such election shall be held at the place and conducted by the officers and the result thereof canvassed in the same manner, as nearly as practicable, as is provided for general elections. At such special elections in towns where the sum to be paid for license is fixed at one hundred dollars the electors may increase such sum to either two hundred and fifty dollars or four hundred dollars; and in all cities, villages and other towns wherein the sum to be paid for license is fixed at two hundred dollars they may increase such sum to either three hundred

and fifty dollars or five hundred dollars. The ballots to be voted at such special elections shall be written or printed on plain white print paper and shall have thereon the words and characters, "To be paid for license, \$—," and shall have written or printed thereon in words or figures the sum to be paid for such license, that is, either of the several sums of one hundred dollars, two hundred and fifty dollars or four hundred dollars, in the class of towns first hereinbefore named, and either of the several sums of two hundred dollars, three hundred and fifty dollars or five hundred dollars in all cities, villages and other towns. The sum receiving the highest number of votes at such election shall be held and considered the sum to be paid for license to so sell such liquors within such city, village or town until an election is again held in the manner herein provided and a different amount is fixed thereat; provided, that if the highest amount voted for does not receive a plurality of the votes cast then the votes cast for such amount voted shall be considered as having been cast for the next lower amount and shall be so counted; and in case of a tie vote upon the lowest and highest sums voted for, if there shall be no votes cast for the third or medium sum, such third or medium sum shall be held and considered the sum to be paid for such license; and provided further, that nothing herein contained shall be construed to diminish the sum to be paid for such license in any city or village as fixed in the charter or ordinances thereof.

As to the effect of ch. 286, 1893, upon this section as it was in the annotated statutes, see *McGuigan v. Belmont*, 89 Wis. 637. As to the form and manner of the notice of election and the form of the ballots under those statutes, see *State v. Janesville*, 90 Wis., 157. If the record does not show whether notice of the election was given or not the court will presume that the law has been complied with: *Ibid*.

278a. For school purposes in cities of first class. [Sec. 17, ch. 273, laws of 1905.] Whenever the board of school directors (in cities of the first class) shall deem it necessary to erect new buildings or additions to old buildings, or to purchase school sites, they may by a two-thirds vote of the members, send a communication to the common council of said city, stating the amount of funds so needed and the purposes for which it is proposed to use the said funds, and requesting the said common council to submit to the voters of the said city at the next election of any sort to be held in the said city, the question of issuing the school bonds of said city, in the amount and for

the purpose or purposes named; and upon receipt of such request from the board of school directors it shall be and is hereby made the duty of the said common council to cause the question of the issuance of the said bonds for the said school purposes to be submitted to the voters of the said city at the next regular, special or other election held in the said city. The question of the issuance of the said school bonds shall be submitted upon a separate ballot, or in some other manner so that the vote upon the issuance of said school bonds shall be taken separately from any other question submitted to the voters at the same election, and if a majority of the votes cast upon such bond proposition shall be in favor of the issuance of said bonds, then the common council of said city shall cause such school bonds to be issued forthwith in the same manner as other bonds which have been properly authorized are issued, and the proper officials of the said city shall sell or dispose of the said bonds in the same manner as other bonds are disposed of and the entire proceeds of the same shall be placed in the city treasury, subject to the order of the said board of school directors, for the purposes named in the request for the issuance of the said bonds. Said school bonds shall not bear a greater rate of interest than four per cent per annum, and shall be payable in twenty years from the date of their issue, one-twentieth of the principal to be payable each year, and the said common council is hereby authorized and it is made their duty to levy and collect a tax upon all property, real and personal, in the said city subject to taxation, in the same manner and at the same time as other taxes are levied and collected, which shall be sufficient to pay the interest on all school bonds outstanding, issued under the provisions of this act, and to pay such part of the principal of such school bonds so issued as becomes due and payable during the next fiscal year. The amount of such school bonds outstanding at any one time shall not be greater than one per cent of the total assessed valuation of all property, real and personal, in the said city subject to taxation, which amount shall be in addition to the amount of bonds authorized by law to be issued for other city purposes, not provided for in this act, and the tax levied to pay the interest on and principal of the said school bonds shall be in addition to the tax levied for the general purposes upon all the taxable property of said city.

ERECTION OF SOLDIERS' MONUMENTS.

279. Vote on question. [Sec. 937, Statutes of 1898.] Any town, city or village may by vote at any general or special election, determine to erect a suitable monument or memorial building to the memory of any such residents thereof as may have lost their lives in the military or naval service of the state or United States, or in rendering great state or national service or in consequence of any such service, and order a tax therefor not exceeding five mills on each dollar of the assessed valuation of all the taxable property therein for the year in which such tax is levied, which tax shall be collected with and as a part of the general taxes. Such question may be submitted by the town or village board or common council by resolution, specifying the particular purpose and character of such proposed monument or building and the amount of tax to be levied therefor, upon notice given as in case of a special election, and if adopted the said board or council shall then pass the appropriate ordinance to carry the same into effect. Every such monument or building shall be erected and the money raised therefor be expended under the direction of the town or village board or council or committees appointed by them, and no greater sum expended in the aggregate than was specified in such resolution.

280. Authority of county boards. [Subd. 12, Sec. 670, Statutes of 1898. Among the special powers conferred on county boards by said section is that expressed in the following subdivision:] 12. To appropriate not exceeding ten thousand dollars for the erection of a suitable monument or building to commemorate the deeds and memory of soldiers and sailors who served the nation in the late war; provided, that no such appropriation shall be made unless the question whether a tax therefor shall be levied and collected is submitted and agreed to by a majority of the electors of the county voting on such question in the manner prescribed in section 937.¹

ANNEXATION OF CITIES, VILLAGES AND TOWNS.

281. Ordinance for and vote upon. [Sec. 928, Statutes of 1898.] Any city, village or town may be annexed to another

¹ Paragraph 279.

contiguous city, village or town by ordinance passed by a two-thirds vote of all the aldermen, trustees or supervisors elect of each corporation desiring annexation, and ratified at an election in each as herein provided. Such ordinance shall fix the terms of annexation, which shall have the force and effect of contract when so ratified. The question of ratification shall be submitted to the electors of each such city, village and town at any general or special election at which notice of submission of such question shall have been given as required for special elections. The ballots in favor of annexation shall contain the words "for union ordinance," and those opposed "against union ordinance," be deposited in a separate box, canvassed and returned as required by law at general elections. If a majority of the votes cast on such question in each and every such city, town and village proposed to be united shall be in favor of such ordinance it shall be deemed ratified and adopted. But no such annexation shall affect or impair any rights or liabilities either in favor of or against any such corporation and suits founded upon such rights and liabilities may be commenced and pending suits be prosecuted and carried to final judgment and execution the same as if annexation had not taken place. The result of such election shall be certified by the several clerks and inspectors thereof, and, together with such ordinances, shall be recorded by the clerk of such consolidated city, village or town.

If a majority. "Wherever a question is submitted to the decision or action of a majority of voters, the meaning" of the statute submitting the question "is the decision or action of a majority of those persons qualified to vote and who do in fact vote upon the question or proposition submitted, unless some different intention is clearly expressed" in such statute, or plainly to be inferred therefrom: *Gilliespie v. Palmer*, 20 Wis. 544; *Sanford v. Prentice*, 28 id. 358.

Form of ballot. The words on the ballot must be substantially such as the law prescribes: *People v. Hansen*, 150 Ill. 122.

ANNEXATION AND DETACHMENT OF TERRITORY.

282. What cities. [Sec. 925—17, Statutes of 1898.] Territory lying adjacent to any city organized under the provisions of this chapter or adjacent to any city organized under a special charter which, by ordinance, has declared such city to be of a certain class according to the provisions of section 925—1, and has adopted, in the manner provided by section

925—4, sections 925—17 to 925—21 inclusive, may be annexed to such city in the manner hereinafter set forth.

283. Petition. [Section 925—18, Statutes of 1898:] Three-fourths of the electors and the owners of at least one-third of the taxable property according to the last tax roll in territory adjacent to such city may together present a petition to the common council of such city asking for annexation thereto; provided, that if no electors reside therein such petition must be signed by the owners of at least three-fourths of the taxable property desired to be annexed before the council shall have power to act thereon; provided further, that the council may, upon the petition of one-half of the resident electors and of the owners of one-half of the real estate within the limits of the territory proposed to be annexed, pass an ordinance annexing such proposed territory when the proposition to annex has been submitted to a vote of the electors of the district to be annexed and a majority of the resident electors have voted in favor thereof. Whenever a proposition to annex territory has been submitted to a vote and rejected the same or substantially the same proposition shall not be again submitted within two years thereafter.

284. Ordinance, action on. [Section 925—19, Statutes of 1898.] At any regular meeting of the common council after the filing of said petition with the city clerk an ordinance may be introduced providing for the annexation of such adjacent territory. Final action on said ordinance shall not be taken except at a regular meeting of the council and not earlier than thirty days after the same is introduced; and in the meantime the same shall be published at least once in each week for four successive weeks in some newspaper printed and published, in said city, if there be one, otherwise in some newspaper to be designated by the council.

285. Vote; adjustment of debts and property. [Section 925—20, Statutes of 1898.] A vote of three-fourths of all the members of said council in favor of said ordinance, taken by ayes and noes and recorded, shall be necessary to its adoption. Any controversy that may arise between the city and the town or towns from which such territory is detached in respect to the division of property or the adjustment of existing indebted-

edness shall be determined by the circuit court in a proper proceeding brought for that purpose, or the adjustment of such indebtedness may be made as provided in section 925—1a.

286. Ordinance; collateral attack; limitation. [Section 925—21, Statutes of 1898.] The adoption of said ordinance shall operate to annex such territory to said city and to the ward or wards designated therein ninety days after the same is passed and published. The validity of the proceedings annexing such territory shall not be called in question collaterally in any court of this state, nor be called in question in any other manner in any such court unless the action or proceeding therefor be commenced within ninety days after such ordinance is adopted.

287. Detachment of territory; debts, property. [Section 925—21a, Statutes of 1898, as amended by chapter 149, laws of 1903.] Upon the petition of a majority of property owners owning three-fourths of the taxable real estate which it is proposed to detach, according to the last tax roll, within the corporate limits of a city of the second, third or fourth class, whether incorporated under the provisions of this chapter or by special charter, and which said taxable property, is within a section adjacent to the boundary lines of any such city, the common council may by ordinance detach such real estate from such city. Such ordinance shall require for its adoption the affirmative vote of three-fourths of all the members of such common council and if so adopted, the said property shall be detached from such city and attached to the town or towns to which the same shall be annexed and shall be taxable therein. Provided, however, that if a petition signed by five per cent. of the electors of such city be presented to such the common council, within ninety days after the passage of such ordinance, demanding that such question be submitted to the electors of such city then such common council shall cause such question to be submitted to the electors of such city at the next ensuing election, and in case a majority of the electors voting on such question shall vote in favor of such proposition, then and thereafter said property shall be detached therefrom and attached to the town or towns to which the same by reason thereof becomes annexed and shall be taxable therein.

It is further provided that such common council may by a majority vote of all its members submit to the electors of such

city at the next ensuing municipal election the question of detaching such real estate from such city, and in case a majority of the electors voting on such question shall vote in favor of such proposition, then and thereafter said property shall be detached therefrom and attached to the town or towns to which the same by reason thereof becomes annexed and shall be taxable therein. Any indebtedness chargeable to such detached territory may be adjusted between such city and the town or towns as provided by section 925—21a or 925—20, and the proceedings for such adjustment may be begun by either the town or city. Any property interest of such detached territory shall vest in the city.

288. Annexation of territory; local option. [Section 926—2, Statutes of 1898, as amended by chapter 207, laws of 1903.] Territory lying adjacent to any city so incorporated may be annexed to such city in a manner provided by sections 925—17 to 925—21 inclusive; provided, that the petition required by section 925—18 shall be sufficient for the purposes therein mentioned if signed by one-half of the resident electors and the owners of one-half of the real estate within the limits of the territory proposed to be annexed. In case said petition for annexation of territory to any city of the second, third or fourth class shall pray that said territory be annexed without license, it shall, in case said territory is annexed to said city, be unlawful for the common council of said city to grant license for the sale of intoxicating liquors in said territory, unless the question of license or no license shall have been submitted to the lawful electors of said territory at a special meeting to be held for that purpose in the manner provided by law for holding special elections in a ward in said city, and a majority of all the votes cast on said question shall be in favor of granting license to sell such intoxicating liquors. Territory may also be detached from any such city in the manner prescribed by section 925—21a.

288a. Fixing number and boundaries of wards in certain cities; ordinance for and vote upon. [Section 1, ch. 123, laws of 1905.] Section 925—14 of the statutes of 1898, as amended by chapter 36 of the laws of 1901 is hereby amended as to cities of the second, third and fourth classes so that the same shall read as follows: Section 925—14. An ordinance fixing the number and boundaries of the wards of any city of the sec-

ond, third or fourth class organized under the provisions of chapter 40a of the statutes of 1898 as amended, may be introduced at any regular meeting of the common council. The question of the adoption of such ordinance shall by a majority vote of the members of the common council elect, be submitted to the electors of such city at the next regular municipal election. The city clerk shall publish a notice that said ordinance shall be so submitted at the same time and in the same manner that notice of said municipal election shall be published, and such notice shall set forth the proposed ordinance at length. He shall also prepare ballots to be used by the electors in voting on said proposed ordinance, which shall intelligently express the voter's intention and which shall be substantially in the following forms:

For adoption of ward ordinance.

Against adoption of ward ordinance.

If a majority of the votes cast are in favor of the adoption of such proposed ordinance the common council shall forthwith thereafter at a regular meeting take action on such proposed ordinance and may by at least a majority vote of those present adopt the same; and when the boundaries of any wards are fixed by any ordinance the number of wards and boundaries thereof, or of any of said wards shall not be again changed for a period of two years except by adding thereto such territory as may at any time be added to the city limits, provided further, that the territory of the wards shall be contiguous and compact and that no ward have a population of less than fifteen hundred in cities of the second class, or less than one thousand in cities of the third class, or less than five hundred in cities of the fourth class. In redistricting such cities the original numbers of the wards and their geographical outlines shall as far as practicable be retained and the wards so created and those the boundaries of which are changed shall be in as compact form as practicable. Whenever the number of wards in any such city shall be changed in the manner aforesaid, and a new ward or wards created, such ward or wards shall have the same number of aldermen, supervisors and ward officers as other wards in such city, and shall be in all respects subject to the provisions of the charter of such city. Any alderman or ward officer holding office and who shall reside in any such territory at the time it shall be declared a ward, shall continue in such office for the term for which he was elected and until his successor is elected and qualified, and shall be an

officer of the ward so created. The inspectors of election and ballot clerks appointed for any such district shall continue to act in their several capacities when such district is constituted a ward, until removed or their successors are appointed. In all other cases where a new ward is so created or old wards consolidated, and the creation or consolidation shall cause vacancies in the offices to which any ward, by reason of the formation, is entitled, the common council shall forthwith order in the manner provided by the charter of such city, a special election to fill all such vacancies as are by the charter of such city elective. All other vacancies shall be filled in the manner provided by the charter of such city. The common council shall in ordering such election fix the term for which the officer shall be elected.

[Section 2. Ch. 123, laws of 1905.] Said section 925—14, as amended by said chapter 36 shall continue in full force in its present form as to cities of the first class, but as to cities of the second, third and fourth class is hereby repealed so far as it conflicts herewith.

ISSUE OF BONDS.

289. By county, town, village or city, for what purposes. [Sec. 942, Statutes of 1898, as amended by sec. 1, ch. 309, laws of 1899.] Any county, town, village or city may, in accordance with the provisions of this chapter,¹ issue negotiable bonds for the purpose of paying for any authorized subscription to the stock or mortgage bonds, or both, issued by any corporation or company organized for building any railroad, whether of broad, ordinary or narrow gauge, or made of iron, steel or wooden rails, or in exchange for or compromise of any such bonds previously issued for such purpose and for the purchase, construction, maintenance and operation of telephone lines and exchanges. Any city or village may also borrow money and issue its negotiable bonds for any of the following purposes, viz.: the purchase or erection of public buildings; the purchase of fire engines or any apparatus for the extinguishment of fires; the purchase or erection of pumps, water mains, reservoirs or any other waterworks; the purchase or erection of electric or gas lighting works, main sewers, sewage disposal

¹ Ch. 41, Statutes of 1898.

works or grounds; the grading, macadamizing or paving streets; the laying out, altering or widening thereof or of public grounds or parks; the purchase or improvement of cemeteries, the construction of school buildings or in exchange for or compromise of any bonds previously issued and outstanding; provided, that the principal of such new bonds shall not exceed the principal of the old bonds; or to accomplish any other purpose in the lawful power of such corporation.

Erection of building; corruption. An election in favor of the erection of a public building will not be set aside because laborers were urged to vote in favor of the measure on the ground that they would obtain employment if it was adopted: *Board of Supervisors v. Judges*, 64 N. W. Rep. 42.

290. Proposition to purchase telephone line, how submitted—Who may vote. [Sec. 1, ch. 309, laws of 1899, adds a section to the statutes of 1898, which is designated as section 942a and reads as follows:] That no county bonds shall be issued for the purchase or erection of telephone lines and exchanges nor shall any bonds be issued therefor unless a proposition setting forth the length, equipment and connections of the proposed lines, denominations of the bonds to be issued, and at what rate of interest, how, when and where said bonds and interest shall be payable; when said bonds shall be delivered with reference to the construction of the line from point to point or its final completion; when said line, if not then completed, shall be finished and providing for escrow of the bonds if the parties so elect, pursuant to the terms of such proposition, shall be first filed with the county, town, village or city clerk, and the same shall thereafter be duly adopted or accepted in either of the ways provided for the acceptance and adoption of a proposition to issue municipal bonds to aid in the construction of a railroad as particularly required by the provisions of sections 945, 946, 947 and 948¹ of the statutes of Wisconsin for the year 1898; be issued for more than fifty per cent. of the entire cost of the telephone lines and exchanges described in any aid proposition, and provided further, that before any person, firm, company or corporation shall be authorized to submit any proposition such person, company, firm or corporation shall file with the secretary of state a notice of intention to operate under the provisions of this act, together with a bond in such form and amount as in the secre-

¹ Paragraphs 292-295 of this compilation.

tary's judgment shall properly protect the interests of the community concerned. Provided, that none but tax payers shall be entitled to vote at any election held for the purpose aforesaid.

291. Proceedings to authorize issue. [Sec. 943, Statutes of 1898, as amended by sec. 1, ch. 74, laws of 1901, ch. 312, laws of 1903, and ch. 378, laws of 1905.] No bonds shall in any case be issued by any town, village or city until the proposition for their issue for the special purpose thereof shall have been submitted to the people of such municipality and adopted by a majority voting thereon; or, if to be issued to aid the construction of a railroad, until the proposition for the issue thereof, shall have been accepted in one of the modes provided therefor in this chapter; nor shall any such bonds be issued payable after a period of twenty years, nor be issued until an ordinance or resolution shall have been lawfully passed directing that there shall be annually levied a tax in addition to all other taxes, sufficient to pay, when due, the interest annually to grow due on such bonds, and also to pay and discharge the principal thereof by the time the same shall be due; and every such tax shall be after the issue of such bonds, irrepealable and be annually levied and collected on all taxable property on the assessment roll of such municipality, and the money raised thereby shall be kept as a separate fund, irrevocably pledged to such purpose, and shall not be employed in any other. Unless it is otherwise provided by law, no town, city or village shall issue any bonds, except to aid the construction of a railroad, unless upon compliance with the following conditions: Whenever a town or village board or common council shall declare its purpose to raise money by issuing bonds, it shall direct, by resolution, which shall be recorded at length in the record of its proceedings, the town, city or village clerk to call a special election for the purpose of submitting the question of bonding the town, city or village, to the electors thereof. The notice of such election shall recite the purpose thereof, state the amount of the bonds it is proposed to issue, the time and place of holding the election and hours at which the polls will be opened and closed. Such notice shall be signed by the town, city or village clerk, and be published in one or more newspapers in the town, city or village for three successive weeks prior to the election; if no newspaper be published therein, such notice shall be posted in four of the most

public places in the town, city or village, at least twenty days prior to the election. Such election shall be held at the usual place or places of holding elections, unless the board or council shall, in the resolution hereinbefore provided for, designate some other place or places. The election shall be conducted by the officers who are required to conduct the regular town, city or village election, and in a similar manner as near as may be, and the polls shall be open between such hours as are now designated for such elections, and the result thereof shall be determined by them, and returned to the town, city or village clerk, who shall record the same in full, and also the notice of election given by him. The ballots shall be provided by the respective town, city or village clerk, and shall be substantially in the following form:

For Bonds.



Against Bonds.



Mark a X in the square under the one you wish to vote for.

They may have the endorsements provided by law for ballots for general election and shall be marked by the voter and counted in a similar manner; provided, no such ballot shall be counted on the question of issuing bonds unless a mark is made thereon applicable to it. And provided further, that when any such special election is held at the same time as a regular town, city or village election, then such form of ballot, instead of being separate may be printed upon the official ballot to be voted at such election. If a majority of the ballots cast shall be in favor of the issuing of bonds, the chairman and clerk of the town, the mayor and clerk of the city, or the president and clerk of the village, as the case may be, subject to the direction of the board or council, may issue bonds to the amount stated in the call, and sell or hypothecate the same for the purpose of raising money for the object stated in the notice of the election; but no bond shall be issued if a majority of the ballots

cast shall be against the issue of the bonds; provided, however, that the provisions of this section shall not apply to the issuing of bonds by any city of this state for street improvements, school purposes, water works, sewerage, parks and public grounds, unless within thirty days after the passage by the common council of the city of a resolution or ordinance authorizing the issuing of bonds for such purposes there shall be filed in the office of the city clerk a petition in writing signed by not less than ten per cent. in number of the voters who voted in said city at the last general state election, asking for a submission of the question of issuing such bonds to a vote of the people in which case such question shall be submitted as provided for in this section; and, in case the common council of any city has heretofore, by resolution or ordinance, authorized the issuing of any bonds for said purposes, the electors of such city shall have thirty days within which to file such petition after the passage and publication of this act, provided further, that this act shall not apply to the issuing of bonds for the funding or refunding of existing indebtedness or liability under chapter 228 of the laws of 1903, or of chapter 277 of the laws of 1903, or any acts amendatory of either.

If a majority. See note to paragraph 288.

Most public places. See note to paragraph 133.

292. Proposition to aid railroad. [Sec. 945, Statutes of 1898.] Whenever any railroad company shall desire a subscription to its stocks or bonds, or both, it shall deliver to the clerk of the county, town, village or city from which such aid is desired a definite proposition in writing, signed by the president and secretary thereof and sealed with its seal, which shall be, if accepted, irrevocably binding on such company, and which shall contain a statement of the manner in which it is desired that such subscription shall be made payable; and if to be payable in bonds, then of the amount of bonds desired, the time when payable, and whether payable before maturity at the option of such municipality, rate of interest they shall bear, and how, when and where payable, and also specifying when said bonds shall be delivered with reference to the time of the complete construction of such railroad from point to point, and within what time such road shall be so constructed as to be entitled to such aid or such bonds or any installment thereof; and also that in consideration thereof such railroad

company will issue to such municipality such number of the shares of its capital stock or such of its mortgage bonds, or partly of the one and partly of the other, as will at their par value be equal to the principal sum of such bonds; and may propose that such bonds of the municipality and such stock or bonds, or both, of such company shall be deposited in escrow with some trustee or trustees to be named, to be delivered to the proper parties when and as the conditions of such agreement shall be complied with by the party entitled to the same thereunder. Every such proposition shall be immediately filed, with the date of its reception indorsed, and transcribed into the proper record book by the clerk receiving the same.

293. Action on proposition, how taken. [Sec. 946, Statutes of 1898.] The proposition provided for in the last preceding section may be accepted so as to become mutually obligatory in either of two modes, as follows:

1. Within three months after the filing of any such proposition with the proper clerk the railroad company may, by a written request, require notice to be given by such clerk, in the manner hereinafter provided for giving notice of an election to consider such proposition, that after a date in such notice named, not less than thirty nor more than sixty days from the date of notice, a petition to the proper authorities of such municipality, praying that such proposition may be accepted and carried into effect, will be presented for their signatures to the male resident taxpayers thereof, which petition, embracing a copy of such proposition, shall be appended as a part of such notice. If thereafter, within four months from the filing of such proposition with such clerk, the railroad company shall deliver to such clerk such petition, embracing a copy of such proposition and bearing the signatures of a majority of the male persons residing in such municipality who were assessed for taxes on real or personal estate therein as shown by the last assessment roll, which signatures shall be verified by the affidavit of some person who witnessed the making of the same, then such proposition shall be deemed accepted after the same shall have been on file in the office of the said clerk at least ten days, and the proper county board, town board, village board, board of trustees or common council shall carry the same into effect in the manner hereinafter provided.

2. At any time within three months after the receipt of such proposition, together with a request signed by at least twelve

resident freeholders that a vote be taken thereon, the respective county board, town board, village board, board of trustees or common council of the municipality to which the same is made may, in their discretion, order an election to be held, and thereupon the clerk of such municipality shall publish a notice¹ of such election, to be held at the usual places of holding elections therein at a time to be fixed by him, not less than thirty nor more than sixty days from the date of such notice; which notice shall further contain a copy of the proposition made by such railroad company and shall notify the legal voters thereof to deposit a ballot upon which shall be written or printed "for the railroad proposition," or "against the railroad proposition;" and such notice shall be posted in three public places in each election district in the municipality in which aid is desired at least twenty days before the day of such election, and shall also be published at least three times before such election in one newspaper in such city, village or town, if any be published therein, and if none be published therein, then in some newspaper in the county; and if the aid is asked of a county, in all the newspapers published therein; and if no newspaper is published in such city, village, town or county, then such notice shall be published in a newspaper published at the nearest place thereto in which one is published. Such election shall be held and conducted in the same manner that

FORM OF NOTICE OF SPECIAL ELECTION TO VOTE ON PROPOSITION
FOR RAILROAD AID.

SPECIAL ELECTION (OR TOWN MEETING).

To vote on proposition of ——— Railroad Company.

A proposition having been filed by the (give name) Railroad Company, in the office of the (county), (city), (town), (village) clerk of (name municipality, if filed in the office of a town, village, or city clerk and name of the county in which it is situated and of the state in any case) on the — day of —, 190—, of which the following is a copy: (Here give full copy:)

And a request having been also, on the — day of —, 190—, filed therewith, signed by (give number, at least twelve) freeholders of said (city), (town), (county) or (village), of (name municipality and if it is a town, village or city state the county in which it is situated and the state in any case), that a vote of the electors of said municipality be taken thereon; and the (county board), (town board), (board of trustees), (common council), (as the case may be) having by an ordinance (or, resolution) adopted on the — day of —, 190—, ordered that an election be held to vote upon such proposition:

Notice is hereby given that an election will be held at the usual place(s) of holding elections in said (county), (city), (town), (village), (as the case may be) on the — day of —, 190—, to vote on said railroad company's said proposition.

The legal voters of said (name the municipality) are hereby notified to deposit a ballot, at such election on which shall be written or printed, "For the railroad proposition" or "Against the railroad proposition."

The polls of the election will be open at — o'clock in the forenoon, and continue open until — o'clock in the afternoon of said day. (Fix time according to the law governing such cases, in city, town, etc.)

Dated — — —

(County), (City), (Town), etc., Clerks.

general elections are by law required to be held and conducted, except that no registration of voters shall be required and the votes cast at such election shall be counted, canvassed and returned in the same manner as the votes at such general election; and the canvassers shall make, certify, sign and deposit with the clerk of such county, town, village or city in which such election is held a statement of the result of such election, and such certified statement shall be presumptive evidence of the number of votes cast for or against such proposition and also that such election was held and conducted according to law. But it is expressly provided that if the railroad company shall elect to pursue the first mode aforesaid, by causing such notice of the presentment of a petition for signatures to be given in any case, then no election shall be held, and unless such proposition be accepted in the time and manner provided in the first of said modes it shall be deemed finally rejected.

All expenses incurred by the publication of the notice as required in this section shall be paid by the railroad company which files the proposition for subscription to railroad stock to the person who publishes such notice, and the county, town, village or city shall not be responsible for such publication.

294. Second election, how ordered. [Sec. 947, Statutes of 1898.] If any election, notified as provided in the last section, shall fail to be held on the appointed day or if a majority shall vote against the railroad proposition another election may be ordered by the proper board or council of such municipality, upon the same or a different proposition of such railroad company, to be called, held and conducted in the same way; but not more than two elections shall be held in any one calendar year upon propositions from the same railroad company in the same county, town, village or city except on a petition signed by not less than one-fourth of the legal voters who voted at the last general town meeting, general or charter election as shown by the poll lists.

295. Effect of acceptance, and of irregularities. [Sec. 948, Statutes of 1898.] If any such proposition shall be accepted in the first of the modes hereinbefore provided or if at any election held as above provided the majority of all lawful votes cast shall be for the railroad proposition, then such proposition shall be deemed obligatory as a mutual agreement on the company making the same and such municipality, and the re-

spective board or council of such municipality shall, after such proposition has been on file with the clerk of such county, town, village or city at least ten days, cause subscriptions to be made on the books of such company for such stock and bonds thereof as were proposed to be issued, and shall provide by ordinance or resolution for executing and issuing such bonds of the municipality, in accordance with such agreement, by the proper officers and the deposit of the same in escrow, if it be so agreed. But no such bonds shall be delivered, or be valid if delivered, until the road to aid in the construction of which they were voted shall have been completed and in operation by the passage of cars continuously from one terminus to such points as such company have agreed to construct the same in consideration thereof. But if such municipality shall have voted for such railroad proposition and shall have subscribed for such stock or bonds, and in reliance thereon such company shall have faithfully performed its agreement, no defects or irregularities in any of the proceedings preliminary to such election shall invalidate such agreement or release such municipality or any officer thereof from the obligation and duty to carry out the same.

296. How vote may be taken. [Sec. 957, Statutes of 1898, as amended by ch. 258, laws of 1905.] Any town, village or city school district or sub-district which contains within its limits an incorporated village or which has a graded school of not less than two departments may establish and maintain not exceeding two high schools in the manner and with the privileges herein provided; but no such school shall be established or maintained unless twenty-five persons of school age, resident of the town, city or village or school district, or sub-district, pass a satisfactory examination in the branches required to be taught in the common school and are prepared to begin a high school course. The question of establishing such schools may be submitted by the town, district, sub-district, village board or common council to the legally qualified voters at any annual or special meeting or election upon written resolution therefor proposed for adoption; provided that ten days' notice of such purpose embodying such resolution be given by posting five copies thereof in five different public places in such town, village, city, school district or sub-district, or by publishing such notice in any newspaper published in any such town, village, city, school district or sub-district, ten days prior to

the time set for holding such meeting. In the case of a sub-district the meeting may be called by the clerk thereof. The vote shall be taken by ballot and canvassed according to the statutes for conducting elections in such municipality, those ballots in favor being written or printed "for high school," those opposed, "against high school." If the resolution be adopted such town, district, sub-district, village or city shall constitute a high school district. But this section shall not apply to high schools already established. No action heretofore taken by any town, village, city, school district or sub-district in voting to form a high school or joint high school shall be invalid by reason of any defect in the form of notice given or the time such notice shall have been given, posted or published; but all steps heretofore taken by any town, village, city, school district or sub-district in forming a high school or joint high school are hereby validated, and declared to conform to law.

CHANGE OF COUNTY SEAT.

297. When and how made. [Sec. 655, Statutes of 1898.] Whenever two-fifths of the legal voters of any county, to be determined by the poll lists of the last previous general election held in such county, the names of which voters shall appear on some one of the poll lists of said election, shall present to the county board a petition signed by them asking a change of the county seat to some other place designated in such petition, it shall be the duty of such board to submit the question of removal of the county seat to a vote of the qualified voters of the county in the manner herein provided. Such election shall be held only on the day of the general election, and shall be conducted and the votes canvassed, certified and recorded in the same manner as other votes at such election, and none but citizens entitled to vote at such general election shall be entitled to vote on the question of the change of county seat. At such election those voting for the removal shall deposit in a separate box to be provided a ballot on which shall be printed or written the words "for the change of county seat," and those voting against such change shall so deposit a ballot on which shall be printed or written the words "against the change of county seat." If a majority of all the votes cast at such election on that subject shall be in favor of the proposed change the chair-

man of the county board shall certify the same, with the attestation of the county clerk, to the governor, who thereupon shall issue his proclamation to that effect and cause the same to be published in the official state paper, and from the date of such publication the place so designated shall be the county seat of such county, and it shall not be lawful for the county board to again submit the question of removal at any time within five years. Four weeks' previous notice of such election shall be given by the county clerk by publishing the same once a week for four weeks in all the newspapers published in such county, or if there be no newspaper published therein, then a written or printed notice shall be posted in two conspicuous places in each town in such county at least four weeks previous to such election; provided, that when a county seat shall have been established in one place for a period of fifteen years or more, and the county has there erected permanent buildings of the value of not less than ten thousand dollars, the county seat shall not be removed, nor shall any application for its removal be submitted to a vote of the electors of the county unless a petition signed by at least one-half of the resident freeholders of the county as evidenced by the recorded deeds in the office of the register of deeds of the county, in favor of such removal, shall first be presented to the county board and filed in the office of the county clerk; and provided further, that no such election to change any county seat shall be held for a period of five years after the year in which a court-house or other county building costing three thousand dollars or more shall have been built at the county seat and occupied for county purposes.

Separate box. See note to paragraph 118.

Offer to furnish buildings. Donating facilities for the public convenience as an inducement to the electors of a county to vote for the removal of a county seat will not invalidate the election: *Neal v. Shinn*, 49 Ark. 227, 234, 4 S. W. Rep. 771, citing *State v. Elting*, 29 Kan. 397; *Dishon v. Smith*, 10 Iowa 212; *Wells v. Taylor*, 5 Mont. 202. The supreme court of this state has distinguished such an offer from one made by a candidate for a county office, in case of his election, to draw only a part of the salary fixed therefor. "The distinction between the election of public officers to whom, for the time being, the exercise of the functions of sovereignty is entrusted, and the mere choice of a site for a public building, is quite apparent. The former involves, or may involve, the integrity of the government and the preservation of the principles upon which it is founded; while the latter is only a matter of public convenience or pecuniary interest, involving no fundamental principle whatever." *State v. Purdy*, 36 Wis. 213, 225.

PURCHASE OF WATER-WORKS OR LIGHTING PLANT BY CITY
OR VILLAGE.

298. By fourth class cities. [Sec. 1, ch. 95, laws of 1901, authorizes cities of fourth class to purchase and operate water works and lighting plants, and sec. 2 of said chapter provides:] The authority and power granted in section one of this act shall be exercised only when the same shall have been ratified by a two-thirds vote of the voters in such city at a special election called for that purpose, as special elections are now authorized to be called, providing however, that no such exercise of power shall require the expenditure of a sum greater than three per cent in any one year on the taxable property of said city.

299. Bonds, election on issue of. [Sec. 959-51, Statutes of 1898.] In all cases where any system of water-works or lighting has been or may hereafter be constructed in any city or village by any person or corporation and such person or corporation shall have heretofore executed or shall hereafter execute any bond or bonds and secure the payment of the same by a mortgage upon or trust deed of such system of water-works or lighting, such city or village may purchase of such person or corporation all of the interest and equity of redemption of such person or corporation in such system of water-works or lighting, or both, and take possession thereof and operate the same. If it shall be necessary or desirable for such city or village, in making such purchase, to issue bonds, the proposition for the purchase of such interest and equity of redemption and the issuing of such bonds shall be submitted to the electors at a special election to be called for that purpose. The notice of such election shall be given by the clerk of such city or village for the time and as required in the case of charter elections therein, and shall state fully the proposition to be submitted to the electors, the character and amount of the bonds to be issued and the form of the ballot to be cast. If a majority of the ballots shall be in favor of such purchase and the issuing of such bonds the common council of such city or the board of trustees of such village may enter into a contract for the purchase of and purchase such interest and equity of redemption in such system of water-works or lighting in pursuance of the terms of the proposition so submitted. The purchase by any city or village of the interest and equity of redemption of any person or corporation in any system of water-works or lighting,

as above provided, shall not create any liability on the part of such city or village to pay, satisfy or discharge any bonds issued or any mortgage or trust deed upon such system of water-works or lighting executed prior to the purchase of such interest and equity of redemption by such city or village, nor shall the amount of such bonds and mortgage or trust deed or any portion thereof be or be deemed to be an indebtedness of or a liability against such city or village. The provisions of this section shall be applicable in all cases where any city or village has or may reserve to itself, in any franchise granted by it for the construction or operation of a system of water-works or lighting, the option and right to purchase such water-works or lighting works.

Not applicable where. Sec. 959-52, Statutes of 1898, provides that the foregoing section shall not apply to cities of the first class or towns containing an unincorporated village.

300. Form of ballot. [Chapter 143, laws of 1901, provides another method for purchasing or building of light or water-works in cities of the third and fourth classes. Sec. 2, ch. 143, laws of 1901, provides:] Before proceeding with the purchase or building of such light or water works the common council of such city shall by resolution passed and signed in the same manner as other resolutions are passed and signed, submit at any municipal or special election to the electors of such city, the question of the purchase or building of such light or water works, and such electors shall vote upon such question on a separate ballot, which shall be substantially in the following form:

For the purchase or building of light or water works (As the case may be.)	
Against the purchase or building of light or water works (As the case may be.)	

And the electors shall designate the nature of their vote by making an X in the square immediately opposite the proposition for which they intend to vote, and such ballots shall be counted, canvassed and returned in the same manner as other ballots cast at such election are counted, canvassed and returned.

SEWER CONSTRUCTION OR IMPROVEMENT.

300a. Vote on levying special taxes in cities of second or third classes. [Sec. 925—239a, Statutes of 1898.] The council of any city of the second or third classes, whether existing under this chapter or special law, may levy, for a term not exceeding five years, a special tax not exceeding one-fourth of one per cent. per annum upon all the property taxable in such city for either of the following purposes:

1. For the planning, construction and completion of a general system of sewers and drains or either of them.

2. For the planning, construction and completion of any change or reconstruction of an established system of sewers and drains or either of them; or.

3. For such portion of the expense of such planning, construction and completion as said council may not find it lawful or expedient to charge to the particular property benefited thereby in the manner provided by the charter of such city or by this chapter.

Before any such tax shall be levied or any contracts or obligations entered into in contemplation thereof said council shall cause to be made and prepared a plan and specifications for the improvement proposed to be made, together with an estimate by the city engineer or surveyor, as the case may be, of the probable cost of such improvement; and said council shall adopt and cause to be published, together with an abstract of the plan aforesaid and the engineer's estimate thereon, in the official city paper a resolution submitting to the electors of said city the question whether a special sewerage tax in an amount and for a number of years to be specified in said resolution, and not exceeding the limits aforesaid, shall be levied, and shall accompany said publication with a notice that said question will be submitted to a vote of such electors at a time therein to be named. Such vote shall be taken not more than sixty nor less than twenty days after the publication of the said plans, estimate and resolution in the manner other municipal elections are held in such cities, and may be held either at the regular municipal election or at a special election to be held for the purpose, and in either case the votes shall be received, counted and canvassed by the officers and in the manner prescribed for regular municipal elections. The ballots for such election shall in all cases be upon a separate ticket, and shall read:

	Yes.	No.
For sewerage tax		

Said ballots shall be marked in the manner prescribed by chapter 5.¹ If a majority of all votes cast upon said question shall be in favor of such sewerage tax then the council may advertise for bids and let the contract for such work to the lowest bidder or bidders, if the lowest bid shall be deemed reasonable, and levy an annual tax not exceeding the amount and for the time authorized by the electors, which tax shall be placed upon the tax roll and collected in the same manner as other special charges. No city shall contract to pay more in any one year pursuant to this section than the amount of the special fund available in such year; but the proceeds of any such tax may be anticipated by the issuance of special sewerage bonds in the manner and under the limitations prescribed by this chapter, and such tax when collected may be devoted to a special sewerage bond sinking fund.

SALE OF CITY OR VILLAGE FRANCHISE.

301. Vote on. [Sec. 959—52, Statutes of 1898.] Whenever an application shall be made to any common council of any city or to the board of trustees of any village for a franchise to construct and operate a system of water-works or of lighting in such city or village such council or board may submit such application to the electors of such city or village at a special election to be called for that purpose, and such council or board shall so submit such application to the electors of such city or village if, at or before the expiration of the publication of such franchise as required by section 940b, a petition requesting such submission, signed by at least twenty per cent. of the electors of such city or village, as appears by the poll list of the last general election, shall be presented to such council or board. The notice of such election shall be given by the clerk of such city or village for the time and as required in the case of charter elections therein. Such notice shall state

¹ See paragraphs 102, 110.

the form of the ballot to be cast at such election. If a majority of the ballots cast shall be in favor of granting such franchise the same shall be granted by such council or board. If a majority of the ballots so cast shall be against granting such franchise such franchise shall not be granted by such common council or board of trustees. Nothing in this or the four preceding sections shall apply to cities of the first class or towns containing an unincorporated village.

ESTABLISHMENT OF TOWNSHIP SYSTEM OF SCHOOL GOVERNMENT.

302. Adoption of system; ballots; notice. [Sec. 552, Statutes of 1898.] The voters of any town may, at any annual town meeting or general election, vote upon the question of township school government. Such voting shall be by ballot, and the ballots used shall have written or printed thereon the words "township school government, yes;" or the words "township school government, no." A separate box shall be provided for the reception of said ballots, and the votes cast shall be counted, canvassed and a record thereof made as in case of other votes cast at such election; and if it shall appear that a majority of the ballots cast have thereon the words "township school government, yes," then the provisions of this chapter providing for the township system shall immediately become operative in such town, otherwise they shall have no force or effect therein. No vote shall be taken on such question unless notice thereof shall be given as hereinafter provided. The clerk of any town, upon the request in writing of any ten electors thereof asking him so to do, shall post in three public places in said town a notice in writing that the question of adopting the township system of school government will be submitted to the electors thereof at the ensuing annual town meeting or general election. Such notice shall be posted at least ten days before the holding of any such meeting or election; and any town having adopted such system may abolish the same at any such meeting or election in the manner provided for its adoption; but when the system shall be adopted it shall continue in force two years before the question of abolishing it shall be acted upon. Whenever the electors of any incorporated village having a graded school with three or more departments shall desire to adopt the town-

ship system of schools they may vote upon the question at any charter or general election; such election shall be by ballot of the form above prescribed and upon like notice, and if a majority of the votes cast upon that subject shall be in favor of the adoption of said system such village shall become a part of the township system of the town in which the same is situated. Whenever any town having adopted the township system shall vote to abolish the same the town board of supervisors shall, on or before the first day of June next succeeding the date at which the vote was taken, meet and by an order made in pursuance of section 413 divide the town into suitable independent school districts, making the order to take effect on the first day of July next following. The sub-district clerks and the secretary of the town board of directors for the year preceding shall make the annual reports for the year ending on that day as required by law notwithstanding their offices have been abolished.

ESTABLISHMENT OF FREE HIGH SCHOOLS.

303. Vote on. [Sec. 490, Statutes of 1898.] Any town, village or city, school district or sub-district which contains within its limits an incorporated village or which has a graded school of not less than two departments may establish and maintain not exceeding two high schools in the manner and with the privileges herein provided; but no such school shall be established or maintained unless twenty-five persons of school age, resident of the town, city or village, school district or sub-district, pass a satisfactory examination in the branches required to be taught in the common schools and are prepared to begin a high school course. The question of establishing such school may be submitted by the town, district, sub-district or village board or common council to the legally qualified voters at any annual or special meeting or election upon written resolution therefor proposed for adoption; provided, notice of such purpose, embodying such resolution, be given in the manner provided for notifying a special district meeting, town meeting or charter election. In the case of a sub-district the meeting may be called by the clerk thereof. The vote shall be taken by ballot and canvassed according to the statutes for conducting elections in such municipality, those ballots in favor being written or printed "for high school;"

those opposed, "against high school." If the resolution be adopted, such town, district, sub-district, village or city shall constitute a high school district. But this section shall not apply to high schools already established.

304. Vote in two or more towns, or town and village. [Sec. 491, Statutes of 1898, as amended by sec. 1, ch. 57, laws of 1899.] Two or more adjoining towns or school districts, or one or more towns or school districts and an incorporated village or city, when the same together will make a district of contiguous territory, may unite in establishing and maintaining any such high school. The resolution proposing the same shall be approved and submitted and the notice of election signed by at least a majority of the supervisors of each town, the directors of each school district, the common council of such city and trustees of such village, if any, and the election shall be notified and conducted in each town, school district, city or village as provided in the preceding section. Such a resolution shall not be adopted unless a majority of the votes cast in each such town, school district, city or village be in favor thereof. The votes shall be canvassed at the first election, and all subsequent elections in the several towns as at town meetings, in the several school districts as at annual school district meetings; in the city, if any, as at a charter election, and in the village, if any, as at village elections; and the supervisors of the several towns, directors of said school districts, common council of such city and trustees of such village shall, within one week after such election, meet and canvass the votes and certify the result to the town clerk of each town, the clerk of each school district, the clerk of such city and to the village clerk of such village. If such resolution be adopted the town, or towns, school district or school districts, and the city and village, so voting, shall constitute a joint high school district.

304a. When question should be submitted to vote. [Section 491c, created by ch. 174, laws of 1905.] It is hereby made the duty of the town, village, city or school district board to submit any resolution proposed in pursuance of section 491 as amended by section 1 of chapter 57 of the laws of 1899, as amended by section 1 of chapter 345 of the laws of 1903, to the voters of such town, village, city or school district upon the filing with said board of a petition in writing, praying for such

submission, signed by at least ten per cent of the qualified electors who voted at the last preceding gubernatorial election in such town, city, village or school district.

305. Tax levy authorized. [Sec. 495*a*, Statutes of 1898; new section, ch. 123, laws of 1903.] Section 495*a*. The electors of any town organized as a town free high school district are authorized at any annual town meeting or special town meeting, regularly called, to levy a tax upon the real and personal property of said town free high school district for the purpose of purchasing a site, erecting a suitable school building thereon, and furnishing said building with the necessary furniture, and heating and ventilating apparatus.

ACCEPTANCE OF DONATIONS AND LEGACIES FOR CARE OF CEMETERIES.

305a. Vote upon question. [Sec. 1, ch. 179, laws of 1905.] Any town, village or city within this state may vote to receive and hold in trust money, the income of which is to be used for the care and improvement of cemeteries and of private lots, and their appurtenances located within such cemeteries.

305b. Vote how taken. [Section 2, ch. 179, laws of 1905.] Such vote shall be taken in towns by the electors thereof, at an annual town meeting, and in villages and cities by an ordinance, duly adopted by their governing bodies at some regular meeting thereof, and to be approved by the president of the village or mayor of the city, as the case may be.

PART XVI.

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306. Duty of county board. [Sec. 1, ch. 338, laws of 1901.] It is hereby made the duty of the county board of every county within whose boundaries there is located an Indian reservation, or any part thereof, where the inhabitants of said reservation, or any part of them, have been declared to be citizens of the United States, to create by resolution to be adopted and filed in the office of the county clerk, on or before December 1, 1901, at least one election district on such reservation.

State jurisdiction. The criminal law of the state applies to Indians on their reservations within the state: *State v. Doxtater*, 47 Wis. 278; *State v. Harris*, *Id.* 298. See note to Sec. 8, Art. VII, Constitution, p. 106, Statutes of 1898.

It has been held in Minnesota that the statutes thereof concerning elections extend over the White Earth Indian reservation, and that election districts may be established therein upon petition to the proper authorities by the requisite number of legal voters: *Hankey v. Bowman*, 84 N. W. Rep. 1002.

307. Petition for election officers; county judge to appoint. [Sec. 2, ch. 338, laws of 1901.] Upon the written petition of twenty-five qualified electors from such an election district, recommending the names of qualified electors, of such district for

appointment as election officers of such district, the county judge of the county in which such district is situated, on or before the first day of August, 1902, shall appoint from the persons so recommended, three election inspectors, two clerks and two ballot clerks who shall hold their respective offices until their successors are duly elected, and have qualified, as hereinafter provided. Not more than two inspectors and one each of the clerks, shall belong to the same political party; such county judge shall file in the office of the county clerk, a certificate of such appointment and shall also forthwith deliver to each such appointee, or mail to him at his usual post office address, a written notice of such appointment.

308. Election of election officers. [Sec. 3, ch. 338, laws of 1901.] At the general election to be held on the first Tuesday after the first Monday in November, A. D. 1902, and biennially thereafter, the qualified electors of said districts shall elect in the same manner as town officers are elected in fully organized towns, three election inspectors, two election clerks and two ballot clerks who shall be qualified electors of such district and who when they shall have qualified as by law required, shall act in place of those appointed by the county judge pursuant to this act. A certificate of their election, signed by the inspectors and clerks acting at such election, shall be filed in the office of the county clerk within thirty days after such election and a duplicate thereof delivered to, or left at the residence of the officers so elected within twenty days after such election. Such officers shall hold their respective offices for the term of two years and until their successors shall be elected and qualified.

309. Oath of office of election officers. [Sec. 4, ch. 338, laws of 1901.] Every such election officer, within thirty days after receiving notice of his election or appointment as hereinbefore provided, shall file in the office of the county clerk of the county in which his district is located, his oath of office as prescribed in section 48, chapter 5, of Wisconsin statutes of 1898, and every such election officer who shall be chosen to fill a vacancy as hereinafter provided, shall take such oath before entering upon the discharge of his duties, and file the same in writing with the county clerk within twenty days thereafter.

310. Powers and duties of. [Sec. 5, ch. 338, laws of 1901.] The election officers, by this act provided for, shall have all the

powers, rights and privileges, perform all the duties and be subject to all the penalties, including those of boards of canvassers, of like election officers in fully organized towns. The election officers appointed by the county judge shall, at least four weeks before the date of the first caucus, primary election or general election at which the electors of such district are entitled to vote, fix the polling place of such district, which shall be as nearly centrally and conveniently located as practicable, and shall provide suitable election booths therefor, and shall also forthwith give public notice of such place, by publication of such notice in at least one weekly newspaper published in the county wherein said district is located, and by posting copies of such notices in at least four of the most public places in such district.

311. Vacancies, how filled. [Sec. 6, ch. 338, laws of 1901.] In case of vacancy in the said board of election officers and in case of failure of either of them to appear for the performance of their duties, as in sub-division 4, section 47, chapter 5, of statutes of 1898 provided for, the vacancy shall be filled in the same manner as in said sub-division 4 or acts amendatory thereof provided.

312. Rights of electors in district. [Sec. 7, ch. 338, laws of 1901.] The said election districts and the electors therein, shall have the same right to hold caucuses, primary elections and be represented at conventions preliminary to elections at which such electors are entitled to vote, as have the electors and districts in regularly organized towns.

313. Compensation of election officers. [Sec. 8, ch. 338, laws of 1901.] Each election officer herein provided for, shall receive the sum of two dollars a day for each day actually and necessarily employed as such election officer, to be paid out of the county treasury on bills duly audited by the county board.

314. Election laws made applicable to. [Sec. 9, ch. 338, laws of 1901.] All laws relating to the ballots, the manner of voting, and the canvass and return of votes applicable to election districts generally, shall be applicable to the election districts hereby provided for, so far as the same are not in conflict with this act.

PART XVII

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315. Wisconsin voting machine commission created. [Sec. 1, ch. 459, laws of 1901.] Be it enacted that there is hereby constituted a body to be known as the Wisconsin Voting Machine Commission. It shall consist of three members, competent and responsible persons, two of whom shall be mechanical experts, not more than two of whom shall be members of the same political party, and none of whom shall have any pecuniary interest in any voting machine. Their term of office shall be five years from the date of appointment. They and their successors shall be appointed by the governor, who shall have power to remove

a commissioner at any time and to fill all vacancies. The first commissioner shall be appointed within thirty days after the taking effect of this act. The commissioners shall qualify by taking an oath in writing to support the constitution of the United States and of the state of Wisconsin and to faithfully and honestly discharge their duties, and filing the same in the office of the secretary of state; and all such examinations shall be public.

Validity of law authorizing voting by machines. See note to paragraph 3.

316. Submission of machines for examination; approval of. [Sec. 2, ch. 459, laws of 1901.] Any person or corporation, owning or being interested in any voting machine, may apply to said commission to examine such machine, and report on its accuracy, efficiency and capacity. The commissioners shall examine the machine and make and file a report thereon in the office of the secretary of state. They shall state in the report whether the kind of machine so examined complies with the requirements of this act and can be safely used by voters at elections under the conditions prescribed in this act. If the report be in the affirmative upon said questions, the machine shall be deemed approved by the commission, and machines of its kind may be adopted for use at elections as herein provided. When the machine has been so approved, any improvement or change that does not impair its accuracy, efficiency or capacity, shall not render necessary a re-examination or re-approval thereof; any form of voting machine not so approved, cannot be used at any election. Each commissioner shall be entitled to one hundred dollars for his compensation and expenses in making such examination and report, to be paid by the person or corporation applying for such examination, which may be demanded in advance of making the examination. The commission may, if it consents so to do, go to any point in the state for the purpose of examining a machine, but it shall not be compelled to make an examination at any place other than the capital of the state.

317. Qualifications required of machines. [Sec. 3, ch. 459, laws of 1901.] No machine or machine system shall be approved by the commission unless it be so constructed as to afford every elector a reasonable opportunity to vote for any person for any office or for or against any proposition for

whom, or for or against which he is by law entitled to vote and enable him to do this in secrecy; and it must be so constructed as to preclude an elector from voting for any candidate for the same office or upon any question more than once, and from voting for any person for any office for whom he is not by law entitled to vote. The machine or machine system may be provided with one lever or device, by the use of which an elector may vote for all candidates of one party, if he so desires, but it must admit of his voting a split ticket as he may desire. It must also be so constructed as to register or record each and every vote cast. For presidential electors one device may be provided for voting for all the candidates of one party at one time by the use of such device, opposite or adjacent to which shall be a ballot on the machine containing the names of all the candidates for all presidential electors of that party and a vote registered or recorded by the use of such device shall be counted for each of such candidates on said ballot. The machine must be constructed so that it cannot be tampered with or manipulated for any fraudulent purpose; and the machine must be so locked, arranged, or constructed that during the progress of the voting, no person can see or know the number of votes registered or recorded for any candidate.

318. Powers of council, etc., to purchase. [Sec. 4, ch. 459, laws of 1901 as amended by sec. 1, ch. 495, laws of 1905.] The common council of any city, the trustees of any village and the town board of any town may adopt and purchase for use in the various precincts, any voting machine approved in the manner set forth in this act, by the voting machine commission, and none other; provided, however, that no machine shall be adopted or purchased by any village or town until the question of such adoption and purchase shall have been submitted to a vote of the people of such village or town at some regular village or town election, and a majority of the votes cast on such question shall have been in favor of such adoption and purchase. If it shall be impracticable to supply each and every election district with a voting machine or voting machines at any election following the adoption of such machines in any city, village or town as many may be supplied as it is practicable to procure, and the same shall be used in such precincts of the municipality as the proper officers may order. The proper officers of any city, village, or town may, not later than sixty days before any election, unite two or

more precincts or wards into one election precinct for the purpose of using therein at such election a voting machine, provided, in case two or more wards shall be so united, such machine shall be so constructed that it will permit the voters of each ward to vote for any and all candidates nominated for offices in such ward, but will prevent such voters from voting for any and all candidates nominated for offices in all other wards; and a notice of such uniting shall be given in the manner prescribed by law for the change of election districts.

319. Payment for. [Sec. 5, ch. 459, laws of 1901, as amended by sec. 2, ch. 495, laws of 1905.] Payment for voting machines purchased may be provided for in such manner as is deemed for the best interests of the city, village, or town purchasing the machine, and any such city, village, or town may borrow money for that purpose or may issue notes, certificates of indebtedness, or other obligations which shall be a charge upon the city, village or town.

320. How placed in booth; duty of inspectors. [Sec. 6, ch. 459, laws of 1901.] The room in which the election is held shall have a railing separating that part of the room to be occupied by the election officers from that part of the room occupied by the voting machine. The exterior of the voting machine and every part of the polling place shall be in plain view of the inspectors. The machine shall be so placed that no person on the opposite side of the railing can see or determine how the voter casts his vote, and that no person can so see or determine from the outside of the room. After the opening of the polls the inspectors shall not allow any person to pass within the railing to that part of the room where the machine is situated except for the purpose of voting and except as provided in the next succeeding section of this act; and they shall not permit more than one voter at a time to be in such part of the room. They shall not themselves remain or permit any person to remain in any position that would permit him or them to see or ascertain how the voter votes or how he has voted. No voter shall remain within the voting machine booth or compartment longer than one minute, and if he should refuse to leave it after that lapse of time, he shall at once be removed by the inspectors.

321. Assistance to physically disabled voter; penalty for deceiving. [Sec. 7, ch. 459, laws of 1901.] If any voter shall

in the presence of the election board, declare that he is unable to read or write the English language or that by reason of physical disability or total blindness he is unable to register or record his vote upon the machine, he shall be assisted as provided by section 54¹ of the statutes of 1898. Any person who shall deceive any elector in registering or recording his vote under this section, or who shall register or record his vote in any other way than as requested by such person, or who shall give information to any person as to what ticket or for what person or persons such person voted, shall be punished as provided in section 4545², statutes of 1898.

322. Ballots, how provided for; sample ballots; posting of; blanks for making returns. [Sec. 8, ch. 459, laws of 1901, as amended by sec. 3, ch. 495, laws of 1905.] Ballots shall be provided by the respective city and county clerks for all the candidates to be voted for at an election and of suitable size to fit the space provided for that purpose on or in the machine and each shall be placed on or in the machine adjacent to or on the registering or recording device therefor. The ballots shall be placed on or in the machine in the order of arrangement provided by section 39 of the statutes of 1898,³ except that they may be vertical columns or horizontal rows. Ballots for all questions must be provided in the same manner and must be arranged on or in the machine in the places provided for such purpose. The officers charged with the duty of providing ballots for any polling place, shall provide therefor five sample ballots which shall be exact copies of the official ballots which are caused to be printed by them, but on different colored paper from the official ballots; said sample ballots shall be arranged in the form of a diagram showing the entire front of voting machine as it will appear after the ballots are arranged thereon for voting on election day. Such sample ballots shall be posted by the inspectors of the precinct, near the entrance of the election booth and shall there be open to public inspection during the whole of election day. In addition to said sample ballots, the proper officers may furnish in connection therewith instruction cards, diagrams of the front of the machine with ballots pasted thereon, at least two of which shall also be posted up near the voting place, if furnished. All bal-

¹ Paragraph 107.

² Paragraph 357.

³ Paragraph 88.

lots shall be published as now provided by law. The ballots for the machines, and also sample ballots, shall be furnished the inspectors at least one day before the election. The officers charged with the duty of providing ballots shall provide for each election precinct in which a voting machine is to be used, return sheets, certificates, and other printed matter necessary for the proper conduct of the election and making up the returns thereof, according to the type of voting machine to be used therein.

323. Duty of common council, etc., as to ballots; setting of machine. [Sec. 9, ch. 459, laws of 1901, as amended by sec. 4, ch. 495, laws of 1905.] The common council of every city, the board of trustees of every village, and the town board of every town in which a voting machine is to be used shall cause the proper ballot to be put upon each machine corresponding with the sample ballots herein provided for, and the machines in every way put in order, set, and adjusted, ready for use in voting when delivered at the precinct, and for the purpose of so labeling the machine, putting in order, setting and adjusting the same, they may employ one or more competent persons who shall be known as the voting machine custodian or custodians, who shall be paid for the time spent in the discharge of their duties in the same manner as the inspectors of election are paid. The said custodians shall, under the direction of such common council, village trustees or town board, cause the machine so labeled, in order, and set and adjusted, to be delivered at the voting precincts, together with all necessary furniture and appliances that go with the same in the rooms where the election is to be held, at least one hour before the time set for opening the polls on election day. When a voting machine shall have been properly prepared for the election and delivered at the election precinct, it shall be locked and sealed against any movement, and the officers, common council, village trustees, or town board shall provide proper protection to prevent its being tampered with; and the custodian or custodians preparing such machine shall deliver the keys thereof to the clerk of the city, village or town in which the machine is to be used, together with their written report of the condition of the machine.

324. Examination of machine by election board before opening of polls. [Sec. 10. ch. 459, laws of 1901, as amended by

sec. 5, ch. 495, laws of 1905.] The members of the election board of each election precinct in which a voting machine is to be used shall meet at the polling place therein at least fifteen minutes before the time set for the opening of the polls at that election, and shall arrange the voting machine and furniture therein for the proper conduct of the election. They shall also, before the opening of the polls, compare the ballot labels on the machine with the sample ballot furnished, and see that the names, numbers, and letters thereon agree. They shall, also, examine the seal upon the voting machine, to see that it has not been broken, and shall examine every counter therein to see that each registers 0 0 0. If any counter in the voting machine shall be found not to register 0 0 0, a notice of such fact, stating the designating number of such counter, together with the number registered thereon, shall be written out and signed by all the members of the election board, and a copy thereof posted in a conspicuous place upon the wall of the polling place, where it shall remain during the election day. The members of the election board shall then certify on each of the blanks furnished for that purpose as to the condition of the voting machine and the counters therein, which blank shall be signed by each member of the board, and after the election one delivered with each copy of the election returns.

325. Irregular ballots; locking of machine at close of polls; determining result. [Sec. 11, ch. 459, laws of 1901, as amended by sec. 6, ch. 495, laws of 1905.] In case a voting machine may be adopted which provides for the registering or recording of votes of candidates whose names are not on the official ballot, such ballots shall be denominated irregular ballots. A person whose name appears on a ballot or on or in a machine or machine system, shall not be voted for, for the same office or on or in any irregular device for casting an irregular ticket, any such votes shall not be counted, except for the office of presidential electors, and any elector may vote in or on such irregular device for one or more persons nominated by one party with one or more persons nominated by any or all other parties, or for one or more persons nominated by one or more parties with one or more persons not in nomination, or he may vote in such irregular device a presidential electoral ticket composed entirely of names of persons not in nomination.

As soon as the polls of the election are closed, the inspectors shall immediately lock the machine, or remove the recording

device so as to prevent against voting, and open the registering or recording compartment in the presence of any person desiring to attend the same, and shall proceed to ascertain the number of votes cast for each person voted for at the election, and to canvass, record, announce, and return the same as provided for on the return sheets and certificates furnished. In recording the votes registered on any counter that before the opening of the polls did not register 0 0 0, the inspectors shall upon the return sheets subtract the number registered on such counter before the opening of the polls from the number registered thereon at the close of the polls, and the difference between such numbers shall be taken as the correct vote for the candidate whose name is opposite such counter on the voting machine, provided, however, that if the number registered on such counter at the close of the polls shall be smaller than the number registered thereon before the opening of the polls, the number one thousand shall be added to the number registered on such counter at the close of the polls, before such subtraction shall be made.

326. Sealing of machine after count; return of irregular ballots and tally sheets. [Sec. 12, ch. 459, laws of 1901.] The inspectors as soon as the count is completed and fully ascertained, shall seal, close, lock the machine, or remove the record so as to provide against voting or being tampered with, and in case of a machine so sealed or locked, it shall so remain for a period of at least thirty days, unless opened by order of a court of competent jurisdiction. When irregular ballots have been voted, the inspectors shall return them in a properly sealed package endorsed "irregular ballots," and indicating the precinct and county and file such package with the county clerk. It shall be preserved for six months after such election and may be opened and its contents examined only upon an order of a court of competent jurisdiction; at the end such six months, unless ordered otherwise by the court, such package and its contents shall be destroyed by the county clerk. All tally sheets taken from such machine, if any, shall be returned in the same manner.

327. Election laws made applicable to machine system. [Sec. 13, ch. 459, laws of 1901.] All laws of this state applicable to elections where voting is done in another manner than by machine, and all penalties prescribed for violation of such laws

shall apply to elections and precincts where voting machines are used in so far as they are not in conflict with the provisions of this act.

328. Penalty for officer's neglect of duty. [Sec. 14, ch. 459, laws of 1901.] Any public officer or any election officer upon whom any duty is imposed by this act or who shall wilfully neglect or omit to perform such duties, or do any act prohibited herein for which punishment is not otherwise provided herein, shall upon conviction, be imprisoned in the state prison for not less than one year or more than three years or be fined in any sum not exceeding one thousand dollars, or may be punished by both such imprisonment and fine.

329. Penalty for tampering with machine after placed in booth. [Sec. 15, ch. 459, laws of 1901.] Any person not being an election officer who, during any election or before any election, after a voting machine has had placed upon it the ballots for such election, who shall tamper with such machines, disarrange, deface, injure or impair the same in any manner, or mutilate, injure, or destroy any ballot placed thereon or to be placed thereon or any other appliance used in connection with such machine, shall be imprisoned in the state prison for a period of not more than ten years or be fined not more than one thousand dollars or be punished by both such fine and imprisonment.

330. Penalty for tampering with to affect result. [Sec. 16, ch. 459, laws of 1901.] Whoever, being an inspector of election with intent to permit or cause any voting machine to fail to correctly register or record any vote cast thereon, tampers with or disarranges such machine in any way, or any part or appliance thereof, or who causes or consents to said machine being used for voting at any election with knowledge of the fact that the same is not in order, or not perfectly set and adjusted, so that it will correctly register or record all votes cast thereon or who, for the purpose of defrauding or deceiving any voter or of causing it to be doubtful for what ticket or candidate or candidates or proposition any vote is cast, or of causing it to appear upon said machine that votes cast for one ticket, candidate or proposition were cast for another ticket, candidate or proposition, removes, changes or mutilates any ballot on said machine, or any part thereof, or does any other

like thing shall be imprisoned in the state prison not more than ten years or fined not exceeding one thousand dollars, or punished by both such fine and imprisonment.

331. Penalty for incorrect return of result. [Sec. 17, ch. 459, laws of 1901.] Any inspector or clerk of an election who shall purposely cause the vote registered or recorded on or in such machine to be incorrectly taken down as to any candidate or proposition voted on, or who shall knowingly cause to be made or signed any false statement, certificate, or return of any kind, of such vote, or who shall knowingly consent to such things, or any of them being done, shall be imprisoned in the state prison not more than ten years, or fined not more than one thousand dollars, or punished by both such fine and imprisonment.

332. Election by experimental use of machine declared valid. [Sec. 18, ch. 459, laws of 1901. The proper officers authorized by this act to adopt voting machines, may provide for the experimental use at an election in one or more precincts, of a machine approved by the Wisconsin voting machine commission without a formal adoption or purchase thereof and its use at such election shall be as valid for all purposes as if formally adopted.

332a. County board in certain counties may adopt and purchase. [Section 1, ch. 269, laws of 1905.] The county board of any county in this state containing a population of 150,000 or more inhabitants is hereby authorized to adopt and purchase for use in any election precinct or precincts in any such county voting machines of the character and description authorized by law to be adopted, purchased and used by the common council of cities, and the town board of towns, or the village board of villages in the state of Wisconsin. Payment for any such voting machine so purchased may be provided for by the county board in such manner as it shall deem for the best interests of the county; and for that purpose such county board may issue notes, certificates of indebtedness or other obligations which shall be a charge on such county.

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333. Bribery at elections. [Sec. 4478, Statutes of 1898.]
The following persons shall be deemed guilty of bribery at elections:

1. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give, lend, or agree to give, or lend, or offer promise or promise to procure or endeavor to procure any money or valuable consideration, to or for any voter, to or for any person on behalf of any voter, or to or for any other person in order to induce any voter to vote or refrain from voting, or do any such act as aforesaid, corruptly, on account of such voter having voted or refrained from voting at any election.

2. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise or endeavor to procure any office, place of employment, public or private, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce such voter to vote or refrain from voting, or do any such act as aforesaid, corruptly, on account of any voter having voted or refrained from voting at any election.

3. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make any such gift, loan, offer, promise, procurement or agreement as aforesaid to or for any person in order to induce such person to procure or endeavor to procure the election of any person to a public office, or the vote of any voter at any election.

4. Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procure, or engage, promise or endeavor to procure the election of any person to a public office or the vote of any voter at any election.

5. Every person who shall advance or pay or cause to be paid any money to or for the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money wholly or in part expended in bribery at any election.

And any person so offending shall be punished by imprisonment in the state prison for a term of not less than six months nor more than two years; provided, that the foregoing shall not be construed to extend to any money paid or agreed to be paid

for or on account of any legal expenses authorized by law and bona fide incurred at or concerning any election.

Payment or promise of money or its equivalent for vote constitutes offense of bribery or attempt to bribe. *State v. Olin*, 23 Wis. 309.

If money or any property is offered to individual electors for their votes at any election held under the laws of this state, all votes shown to have been obtained thereby will be rejected in an action to determine the right to the office: *Ibid.*

In like manner a vote given for a candidate for any public office in consideration of his promise, if he is elected, to donate a sum of money, as a part of the salary fixed for the office or other valuable thing to a third person, as to the county in which he is a candidate, will be rejected: *State v. Purdy*, 36 Wis. 213. See note to paragraph 226.

334. Same subject. [Sec. 4478a, Statutes of 1898.] The following persons shall also be deemed guilty of bribery at elections:

1. Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree or contract for any money, gift, loan or valuable consideration, office, place of employment, public or private, for himself or for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any election.

2. Every person who shall, after any election, directly or indirectly, by himself or by any other person in his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting at any election; and any voter or other person so offending shall be punished by imprisonment in the county jail not less than one month nor more than one year.

335. Bribery at caucus or convention. [Sec. 4479, Statutes of 1898.] Any person being or seeking to be a candidate for any office at any election authorized by law who shall give or promise to give to any elector or other person any money or thing of value or any pecuniary advantage or benefit for the purpose of inducing or influencing such elector or other person to vote for him in any convention or meeting of the people held for the purpose of nominating any person or persons to be voted for at any such election, to make him the nominee of any such convention or meeting and the candidate to be voted for for any

office at such election, or who shall so give or promise any such thing to any such person for the purpose of inducing or influencing any person to sign any nomination paper which seeks to have him nominated as a candidate for any office to be so voted for; and any such elector or other person who shall ask, solicit or receive any money or thing of value or any pecuniary advantage or benefit from such candidate as a consideration or inducement for his vote at any such convention or meeting of the people, or his signature to any such paper, shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding five hundred dollars.

Validity. A statute of similar import has been held valid: *Leonard v. Commonwealth*, 112 Pa. St. 607, 622.

Candidate for office. A man who is seeking an office is a candidate for it, whether nominated or not: *Ibid*.

336. Use of threats, etc. [Sec. 4480, Statutes of 1898.] Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make use of or threaten to make use of any force, violence or restraint in order to induce or compel any person to vote or refrain from voting at any election, or who shall, by abduction, duress or any fraudulent device or contrivance, impede or prevent the free exercise of the franchise at any election, or shall thereby compel, induce or prevail upon any elector either to give or refrain from giving his vote at any election for or against any particular candidate or measure, shall be punished by imprisonment in the county jail not less than one month nor more than one year.

Inducing elector not to vote. Under an Indiana statute the offense is committed if a voter is hired to go away from the polls and refrain from voting at the time he goes there for that purpose, though he afterwards votes: *Thompson v. State*, 44 N. E. Rep. 763.

337. Office obtained by bribery vacant. [Sec. 4481, Statutes of 1898.] Any person who shall obtain any office or shall have been elected to any office at any election, at which election he shall have induced or procured any elector to vote for him for such office by bribery, shall be disqualified from holding said office, and he shall be ousted therefrom, and said office shall be deemed and held vacant, to be filled by election or appointment as other vacancies, according to law.

See note to paragraph 333.

338. Illegal voting, etc., at caucus. [Sec. 4542a, Statutes of 1898.] Any person who shall vote or offer to vote more than once in any one caucus, or at any caucus held in any caucus district in which he shall not at the time be a resident and duly qualified elector, or in any caucus where candidates and delegates are to be chosen, if he has already voted at the caucus of any other political party for candidates to be voted for or for delegates to be chosen in a convention to nominate candidates to be voted for at the next ensuing election, or who shall print, distribute or offer to distribute any caucus tickets or ballots to be voted for at such caucus, or shall print or distribute sample ballots or remove from any booth or place where a caucus is held any tickets for candidates or persons to be voted for, shall be punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail not less than two months nor more than six months, or by both such fine and imprisonment.

See paragraphs 48, 49.

339. Bribery in connection with caucus. [Sec. 4542b, Statutes of 1898.] Every person who, by bribery or corrupt or unlawful means, prevents or attempts to prevent any voter from attending or voting at any preliminary meeting or caucus mentioned in sections 11a to 11i¹ or who shall give or offer to give any valuable thing or bribe to any officer, inspector or delegate whose office is therein created, or who shall give or offer to give any valuable thing or bribe to an elector as a consideration for some act to be done in relation to such preliminary meeting, caucus or convention, or who shall interfere with or in any manner disturb any preliminary meeting, caucus or convention held under said provisions shall be punished as provided in section 4542a.²

See paragraphs 48, 49.

340. Other violations of caucus law. [Sec. 4542c, Statutes of 1898.] If any person shall be convicted of a violation of any of the provisions of sections 11a to 11i,³ inclusive, for which no other punishment is provided, he shall be punished by a fine not exceeding five hundred dollars or by imprisonment in the

¹ Secs. 11a-11h are in paragraphs 50-57; sec. 11i was repealed by ch. 341, laws of 1899.

² Paragraph 338.

³ Paragraphs 50-57; sec. 11i was repealed by ch. 341, laws 1899.

county jail not less than two months nor more than six months, or by both such fine and imprisonment.

See paragraphs 48, 49.

341. Illegal voting; fraudulent registration. [Sec. 4543, Statutes of 1898 as amended by ch. 313, laws of 1905.] Any person who shall vote at any general or special election, town meeting or election, school meeting or election, city, village or charter election, not having the requisite qualifications and residence as a legal voter, or having no right to vote by reason of disfranchisement or other disqualification at the time and place of such election, or who shall cause or procure his registration by any board of registry as a legal voter in any election district, when he shall not at the time have the requisite qualifications to entitle him to be registered in such district, or who shall wilfully make any false statement not under oath to the inspectors of any election or to any board of registry when offering to vote or to be registered as a voter in any election district in respect to his qualifications or residence as a voter in such district, or who shall cause or procure his name to be registered as a voter in more than one election district for one and the same election, or who shall falsely personate another person registered as a voter in any election district, or who shall vote more than once at the same election, or who shall procure, aid, assist, counsel or advise another to do any act hereinbefore specified shall be punished by imprisonment in the state prison not more than three years nor less than one year or in the county jail not more than one year, or by fine not exceeding two hundred dollars. It shall be the duty of the election board to post a copy of this law in a conspicuous place in the election booth prior to the holding of said election.

342. Personation of elector. [Sec. 4543a, Statutes of 1898.] A person shall, for all purposes of this section, be deemed guilty of the offense of personation who, at any election held pursuant to the laws of this state, applies for a ballot paper in the name of some other person, whether that name be of a person living or dead, or of a fictitious person, or who, having voted once at any election, applies at the same election for a ballot paper in his own name or any other name; and any person who commits the offense of personation or who aids, abets, counsels or procures the commission of that offense shall be

punished by imprisonment in the state prison for a term of not less than two years nor more than five years.

343. Contributions to aid nominations, etc., of legislators. [Sec. 4543b, Statutes of 1898.] No person shall, directly or indirectly, give, subscribe, promise or pay or agree to pay any sum of money or thing of value to procure or aid in procuring the nomination or election of any person to the senate or assembly of this state unless the person so making such subscription, promise, payment or agreement is a citizen or bona fide resident of the district in which such other person is or seeks to be chosen, voted for or elected; provided, that this provision shall not apply to the payment by any person participating in a campaign of his own personal expenses therein nor to the promise or payment, otherwise lawful, of any sum to any political committee in the state or in any district or region thereof, of which the promisor or payor is a citizen or resident, for general lawful purposes and without any agreement or understanding, express or implied, that it be used or applied to the procuring of the nomination or election of any person or persons in particular to said senate or assembly. Any person offending against the provisions of this section shall be punished by imprisonment in the county jail not less than one month nor more than one year.

344. Accounts of expenditures by candidates. [Sec. 4543c, Statutes of 1898, as amended by sec. 1, ch. 502, laws of 1905.] Every person who shall be a candidate before any convention or at any primary or election to fill an office for which a nomination paper or certificate of nomination may be filed, shall within thirty days after the election held to fill such office, make out and file with the officer empowered by law to issue the certificate of election to such office or place, a statement in writing, subscribed and sworn to by such candidate, setting forth in detail each item in excess of five dollars in money or property contributed, disbursed, expended or promised by him and to the best of his knowledge and belief, by any other person or persons for him or in his behalf, wholly or in part, in endeavoring to secure or in any way in connection with his nomination or election to such office or place, or in connection with the election of any other person at said election, the dates when, and the persons to whom, and the purpose for which all said sums were paid, expended or promised, and the total aggregate

sum paid, expended or promised by such candidate in any sum or sums whatever. Such statement shall also set forth that the same is as full and explicit as affiant is able to make it. An exact duplicate of such statement shall in like manner and within the same time be filed with the register of deeds for the county in which such candidate resides. Any person failing to comply with this section shall be punished by a fine of not less than twenty-five dollars or more than five hundred dollars.

344a. [Section 4543c—1. Created by section 2, ch. 502, laws of 1905.] It is hereby made the duty of every officer empowered by law to issue certificates of election, or with whom nomination papers for any primary or election or certificates of nomination for any election are required to be filed, within five days after the holding of an election to fill any office, to forward to all candidates for whom nomination papers or certificates of nomination shall have been filed for such election, or the primary proceeding the same, duplicate blanks for making the statement required by the preceding section. Upon the expiration of sixty days from the time of holding any election, each such officer shall make out a list of all candidates who shall have failed to file with him the statement required by the preceding section, duplicates of which statement shall forthwith be transmitted by him to the district attorney and the county clerk of the county within which such candidate resides. Such county clerk shall at the expense of the county cause such list to be published at least once in the official county paper, and also provide the blanks required by this section. The persons mentioned in section 4080 and the amendments thereto shall upon demand administer any oath required by the preceding section and certify thereto without charge. Any person failing to comply with this section shall be punished by a fine of not less than twenty-five dollars or more than five hundred dollars. It shall be the duty of the district attorney to examine all statements filed and institute prosecutions for the violation of this and the preceding section.

345. Disbursements by committees. [Sec. 4543d, Statutes of 1898.] Every two or more persons who shall be elected, appointed or chosen by a political convention or caucus for the purpose, wholly or in part, of raising, collecting or disbursing money or of controlling or directing the raising, collection or disbursement of money for election purposes, and shall under-

take such duty, shall be deemed a political committee within the meaning of this and the three following sections. Every such committee shall appoint and constantly maintain a treasurer to receive, keep and disburse all sums of money which may be collected, received or disbursed by such committee or by any of its members for any of the purposes mentioned in this section for which such committee exists or acts. Every member of such committee who shall keep or disburse any money collected or received for the purposes herein mentioned, without the same having been first paid and made to pass through the hands of such treasurer, or who shall fail to pay over to such treasurer all money received or collected by him for such purposes shall be punished by imprisonment in the county jail for not less than two months nor more than six months.

346. Treasurer's accounts. [Sec. 4543e, Statutes of 1898.]

Every treasurer of a political committee and every person who shall at any time act as such treasurer shall, whenever he receives or disburses money as such treasurer or for or on account of any of the objects or purposes mentioned in section 4543d, immediately enter and thereafter keep in a proper book or books to be provided and preserved by him a full, true and detailed statement and account of each and every sum of money so received by him, setting forth in such statement the sum so received or disbursed, as the case may be, and the date when and the person for whom received and to whom paid, and the object and purpose for which the sum was received or disbursed.

347. Statement of accounts. [Sec. 4543f, Statutes of 1898.]

Every treasurer of a political committee and every person who shall act as such treasurer shall, within thirty days after each and every election, whether state, county, city, municipal, township or district, in or concerning or in connection with which he shall have received or disbursed any money for any of the objects or purposes mentioned in section 4543d, prepare and file in the office of the register of deeds of the county in which such treasurer or person lives a full, true and detailed account and statement, subscribed and sworn to by him, setting forth each and every sum of money received or disbursed by him for any of the objects or purposes mentioned in said section, within the period of ninety days before such election and

ending on the day on which such statement is filed, the date of each receipt and of each disbursement, the name of the person to whom paid, and the object or purpose for which the same was disbursed. Such statement shall also set forth the unpaid debts and obligations, if any, of such committee, with the nature and amount of each and to whom owing, in detail; and if there are no unpaid debts or obligations of such committee such statement shall state such fact. Such register of deeds shall receive and file in his office and keep there for one year after they are filed all statements and accounts so required to be filed with him, and they shall at all reasonable times be open to public inspection. After one year succeeding the filing of such statements and accounts they shall be destroyed by such officer or his successor.

348. Penalty. [Sec. 4543g, Statutes of 1898.] Every treasurer of a political committee who shall either:

1. Neglect or fail to keep a correct book or books of account setting forth all the details required to be set forth in the account and statement contemplated in the foregoing sections, with intent to conceal the receipt or disbursement of any sum received or disbursed by him or any other person, or the purpose or object for which the same was received or disbursed by him or any other person, or the purpose or object for which the same was received or disbursed, or to conceal the fact that there is any unpaid debt or obligation of such treasurer or committee, or the nature or amount thereof, or to whom owing, in detail; or,

2. Mutilate, deface or destroy any such book or books of account, with intent to conceal any fact disclosed by such book or books; or,

3. Fail to file the statement and account contemplated by section 4543f, if due, within five days after he shall receive notice in writing signed by five resident freeholders of the county in which such treasurer or political committee or person resides, requesting him to file such statement and account, shall be imprisoned in the county jail for not less than two or more than six months.

348a. Use of money by corporations in elections prohibited. [Sec. 1, ch. 492, laws of 1905.] No corporation doing business in this state, shall pay or contribute, or offer, consent or agree to pay or contribute, directly or indirectly, any money, prop-

erty, free service of its officers or employees or thing of value to any political party, organization, committee or individual for any political purpose whatsoever, or for the purpose of influencing legislation of any kind, or to promote or defeat the candidacy of any person for nomination, appointment or election to any political office.

348b. Penalty for violation. [Sec. 2, ch. 492, laws of 1905.]

Any officer, employee, agent or attorney or other representative of any corporation, acting for and in behalf of such corporation, who shall violate this act, shall be punished upon conviction by a fine of not less than one hundred nor more than five thousand dollars, or by imprisonment in the state prison for a period of not less than one nor more than five years, or by both such fine and imprisonment in the discretion of the court or judge before whom such conviction is had and if the corporation shall be subject to a penalty then by forfeiture in double the amount of any fine so imposed to be collected as other actions by forfeiture are collected and if a domestic corporation, it may be dissolved, if after a proper proceeding upon quo warranto, in either the circuit or supreme court of the state to be prosecuted by the attorney general of the state, the court shall find and give judgment that section 1 of this act has been violated as charged, and if a foreign or non-resident corporation, its right to do business in this state may be declared forfeited.

348c. Violation by representative of corporation; prosecution. [Sec. 3, ch. 492, laws of 1905.] The violation of this act by any officer, employee, agent, attorney or other representative of a corporation, shall be prima facie evidence of said violation by such corporation. All fines or forfeitures recovered under any of the provisions of this act, shall, when collected, be paid into the proper treasury of the county for the use of the school fund and it is hereby made the duty of the district attorney of each county to conduct prosecutions under this act upon complaint as in other actions.

348d. Penalty for aiding or abetting violation. [Sec. 4, ch. 492, laws of 1905.] Any person or persons who shall aid, abet or advise a violation of this act shall be guilty of a felony and upon conviction shall be punished as in section 1 of this act,

348e. Violations where prosecuted. [Sec. 5, ch. 492, laws of 1905.] Violations of this act may be prosecuted in the county where such payment or contribution is made or services rendered or in any county wherein such money has been paid or distributed.

349. Fraudulent canvass of votes. [Sec. 4544, Statutes of 1898.] Any member of a board of canvassers of votes cast at any election who shall knowingly make or assist in making any untrue or false statement or canvass of such votes or any false certificate thereof, or who shall wilfully alter or destroy any statement or canvass of such votes or certificate thereof truly made after the same is made, or any return, statement, canvass or certificate of such votes made to such board of canvassers, or any member of the state board of canvassers of votes cast at any election who shall make or assist in making any canvass or statement of such votes, or sign or make or assist in making any certificate of the correctness thereof which shall include or contain any votes or statement or return of votes in the form of additional or supplemental returns, or who shall count, canvass or consider any such additional or supplemental returns in determining the result of any election shall be punished by imprisonment in the state prison not more than three years nor less than one year, or in the county jail not more than one year, or by fine not exceeding five hundred dollars.

350. Fraud as to nomination papers, ballots, etc. [Sec. 4544a, Statutes of 1898.] Any person who shall falsely make, or make oath to, or fraudulently deface or fraudulently destroy any certificate of nomination or nomination paper or any part thereof, or file or receive for filing any certificate of nomination or nomination paper knowing the same or any part thereof to be falsely made, or suppress any certificate of nomination which has been duly filed or any part thereof, or forge or falsely make the official indorsement on any ballot, or wrongly print or cause to be printed, with intent to change the result of the election as to any candidate or nominee, any official ballot, or any ballot clerk who shall deliver to a voter a ballot bearing a mark opposite the name of a candidate made with a pencil or ink, that might be counted as a vote for such candidate, shall be punished by imprisonment in the state prison not more than three years nor less than one year.

351. Neglect of duty by election officers. [Sec. 4544b, Statutes of 1898.] Any public officer who shall wilfully fail or neglect to perform any duty imposed upon him by the provisions of title two of these statutes relating to elections, or knowingly make any false certificate in respect to such duty, or to any matter which he may be required by law to certify to officially, shall be punished by imprisonment in the county jail not exceeding nine months nor less than three months or by fine of not more than five hundred dollars nor less than two hundred dollars.

352. Neglect to deliver ballots; removal of supplies. [Sec. 4544c, Statutes of 1898.] Any person who shall undertake to deliver the official ballots prepared for any election to any clerk or inspector of election, or who shall wilfully or negligently fail to deliver the same or cause their delivery within the time required by law, or who, having charge of such ballots, shall destroy or conceal them, and any person who shall remove or destroy any of the supplies or conveniences placed in the shelves or compartments or polling booths for the purpose of enabling voters to prepare their ballots, shall be punished by imprisonment in the county jail not more than six months nor less than three months or by fine not exceeding three hundred dollars nor less than one hundred dollars.

353. Electioneering; removing or showing ballot; voting ballot not received from clerk, etc. [Sec. 4544d, Statutes of 1898.] No officer of any election held under the provisions of title two of these statutes shall engage in electioneering on the day on which any such election is held, nor shall any person solicit votes for any candidate or party or engage in any electioneering whatever on the day of any such election within one hundred feet of any polling place, nor remove any ballot from any polling place before the polls are closed, nor show his ballot after it is marked to any person in such a way as to reveal the mark or marks made thereon, nor solicit any person to so show his ballot. No person except an inspector of election shall receive from any voter a ballot that has been prepared for voting; nor shall any voter receive a ballot from any other person than one of the ballot clerks in charge of the ballots, nor shall any other person than such clerks deliver a ballot to any voter; no voter shall vote or offer to vote any ballot except it has been received from one of the ballot clerks,

nor shall he place any mark upon his ballot by which it may be identified as the one he voted; and every voter who does not vote the ballot delivered to him by the ballot clerks shall, before leaving the polling place, return such ballot to such clerks or one of them. Whoever shall violate any of the provisions of this section shall be punished by imprisonment in the county jail not exceeding six months, or by fine of not more than three hundred dollars nor less than fifty dollars, or by both fine and imprisonment with the costs of prosecution.

Electioneering. It has been held in New Jersey that a similar provision is not invalid on the ground that it is an infringement of the constitutional right of citizens to express their sentiments upon public men and measures and to persuade their fellows to vote in accordance with their wishes: *State v. Black*, 24 Atl. Rep. 489.

Marked ballot. In Texas a ballot is not to be rejected because contrary to the statute imposing a penalty for marking it or showing it to any person in such a way as to reveal its contents after it is marked, the voter writes his name upon it, the statute not declaring that such a ballot shall be void: *Hanscom v. Lockhart*, 31 S. W. Rep. 547.

Where the statute does not declare that a ballot with an identifying mark upon it shall not be counted, a blot or mark made inadvertently, or not so made, intentionally, as to enable third persons to determine from an inspection of it, without other aid, that the ballot so marked was deposited by a particular person, it is to be presumed that the marking was inadvertently done, and it is to be counted: *Church v. Walker*, 74 N. W. Rep. 198 (S. D.); *State v. Russell*, 51 N. W. Rep. 465 (Neb.); *Howser v. Pepper* 79 N. W. Rep. 1018 (N. D.). But see *Van Winkle v. Crabtree*, 55 Pac. Rep. 831 (Oregon).

354. Neglect as to special matters. [Sec. 4544e, Statutes of 1898.] Any officer whose duty it is to appoint inspectors of election, clerks of election or ballot clerks, who shall disobey the provisions of law requiring, when it is practicable to do so, the appointment thereof from opposing political parties; any officer required by law to provide election booths and compartments with doors, screens or curtains, who shall fail to provide and maintain the same; any election officer who shall take notice of the manner in which any elector shall mark his ballot, unless request be made to him to assist in doing so, or permit any other person to pry into or take notice of the same, and any officer who assists a voter at his request, or otherwise becomes aware of the manner in which a voter marked his ballot, or for whom he voted, and discloses the same to any other person, except in the course of judicial proceedings, shall

be punished by imprisonment in the county jail not more than thirty days nor less than ten days, or by fine not exceeding one hundred dollars nor less than twenty-five dollars, or by both such fine and imprisonment.

355. Neglect to deliver statement of canvass. [Sec. 4544f, Statutes of 1898.] Any person who shall accept from any board of election inspectors the statement of the canvass of the votes prepared by them for the delivery thereof to the proper town, city or village clerk as required by law, and who shall fail to deliver the same or cause its delivery to be made to the proper clerk within forty-eight hours after accepting the same for that purpose, without sufficient excuse for such failure, shall be punished as is provided in the last preceding section.

356. Such neglect by officers and messengers. [Sec. 4544g, Statutes of 1898.] Any chairman of any board of election inspectors, or any inspector appointed by him to deliver to any town, city or village clerk any statement of the result of the canvass of any votes made by such board or any duplicate of the same to be delivered to any county clerk, who shall fail or neglect to deliver such statement to the proper town, city or village clerk forthwith, or to deliver such duplicate statement to the proper county clerk within two days after the election as required by law; any messenger sent by any board of canvassers for election returns or with such returns for the correction thereof, who shall wilfully fail to perform that duty or who shall unlawfully keep back or fail to deliver any returns so intrusted to him, shall, in addition to any other punishment provided by law for withholding, suppressing, destroying or failing to deliver such returns, be punished by imprisonment in the county jail not more than thirty days nor less than ten days, or by fine not exceeding fifty dollars nor less than twenty-five dollars, or by both such imprisonment and fine.

357. Neglect and fraud in conducting elections. [Sec. 4545, Statutes of 1898.] Any inspector of elections who shall, after the polls are open to receive votes, put into any ballot-box any vote, other than his own or the vote of another lawfully received, or who shall receive or consent to the reception of the vote of any person, knowing that such person has not the requisite qualifications and residence of a legal voter, or of

any person who shall refuse to make the oath or affirmation required by law or to answer any proper question put to him in respect to his qualification or residence as a voter, or who shall refuse or wilfully neglect or sanction the refusal or wilful neglect of another inspector to put such proper questions or administer such oath or affirmation to any person offering to vote; or any member of a board of registry who shall register the name of any person as a legal voter in any election district or consent to such registration, knowing that such person has not the requisite qualifications to entitle him to be registered in such district, or when such person shall have refused to take the oath or affirmation required by law or to answer the questions put to him in respect to his qualifications to be registered in such district, or who shall refuse or wilfully neglect to put such questions or administer such oath or affirmation to such person; or any inspector or clerk of elections who shall knowingly make, assist in making or cause to be made any false statement or return of the votes cast at any election, or who shall wilfully alter or destroy any registration list, poll-book or return of said votes, or who shall refuse or wilfully neglect to make any statement, canvass, certificate or return of said votes as required by law; or any inspector, member of any board of registry, member of any board of canvassers, or any officer or other person from whom any duty or service is required by law in respect to any election, who shall refuse or wilfully neglect to perform such duty or render such service, or who shall wilfully violate any provision of law or be guilty of any fraud in respect to any election shall be punished by imprisonment in the state prison not more than three years nor less than one year, or in the county jail not more than one year, or by fine not exceeding five hundred dollars, except as is otherwise provided in these statutes.

Person not having qualifications of elector. As used in sec. 42, ch. 169, R. S. 1858, these words meant any person disqualified, incapacitated or disentitled to vote from any of the causes fixed by law, and referred to the condition at time vote received: *Byrne v. State*, 12 Wis. 519.

Duties and liabilities of inspectors. Inspectors acting in a quasi-judicial capacity and discharging their duty in good faith are not criminally liable for errors of judgment or mistakes of law: *Byrne v. State*, 12 Wis. 519.

Persons offering to vote and taking prescribed oath must be permitted to do so: *Gillespie v. Palmer*, 20 Wis. 544. Action lies against inspector for unlawfully refusing to receive vote, though without malice: *Ibid.*

358. Deceiving elector. [Sec. 4546, Statutes of 1898.] Any person who shall furnish an elector who cannot read with a ticket, informing him that it contains a name or names different from those which are written or printed thereon, with intent to induce him to vote contrary to his inclination, or who shall fraudulently or deceitfully change a ballot of any elector, by which such elector shall be prevented from voting for such candidate or candidates as he intended, or who shall fraudulently put any ballot or ticket into the ballot-box shall be punished by imprisonment in the state prison not more than three years nor less than one year, or by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars.

359. Parade of national guard. [Sec. 4547, Statutes of 1898.] Any officer or other person who shall call out or order any of the Wisconsin national guard for instruction, review or parade in any county on any day during which any election shall be held therein or within five days before such election, except in case of riot, invasion, insurrection or imminent danger thereof, shall be punished by fine not exceeding one hundred dollars.

360. Breaking ballot box, etc. [Sec. 4548, Statutes of 1898.] Any person not authorized by law who shall, during the progress of any election in this state or after the closing of the polls and before the ballots are counted and the result ascertained, break open or violate the seals or locks of any ballot-box in which ballots have been deposited at such election, or who shall obtain unlawful possession of such ballot-box containing such ballots, or shall conceal, withhold or destroy the same, or who shall wilfully, fraudulently or forcibly add to or diminish the number of ballots legally deposited in said ballot-box, or any person who shall aid or abet in so doing shall be punished by imprisonment in the state prison not more than three years nor less than one year, or by fine not exceeding three thousand dollars nor less than one thousand dollars.

361. Penalty if none prescribed. [Sec. 4635, Statutes of 1898.] Any person who shall be convicted of any offense the punishment of which is not prescribed by any statute of this state shall be punished only by imprisonment in the county jail not more than one year or by fine not exceeding two hundred and fifty dollars.

PART XIX.

CITIZENSHIP AND NATURALIZATION.

CITIZENSHIP.

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CITIZENSHIP.

362. Native born persons. [Sec. 1992, R. S. of U. S.] All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States.

363. Children born abroad. [Sec. 1993, R. S. of U. S.] All children heretofore born or hereafter born out of the limits and

jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States.

364. Married women. [Sec. 1994, R. S. of U. S.] Any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized shall be deemed a citizen.

365. Persons born in Oregon. [Sec. 1995, R. S. of U. S.] All persons born in the district of country formerly known as the territory of Oregon, and subject to the jurisdiction of the United States on the eighteenth of May, one thousand eight hundred and seventy-two, are citizens in the same manner as if born elsewhere in the United States.

366. Forfeiture of rights. [Sec. 1996, R. S. of U. S.] All persons who deserted the military or naval service of the United States and did not return thereto or report themselves to a provost marshal within sixty days after the issuance of the proclamation by the president dated the eleventh day of March, one thousand eight hundred and sixty-five, are deemed to have voluntarily relinquished and forfeited their rights of citizenship, as well as their right to become citizens; and such deserters shall be forever incapable of holding any office of trust or profit under the United States, or of exercising any rights of citizens thereof.

367. Exceptions to the foregoing. [Sec. 1997, R. S. of U. S.] No soldier or sailor, however, who faithfully served according to his enlistment until the nineteenth day of April, one thousand eight hundred and sixty-five, and who without proper authority or leave first obtained, quit his command or refused to serve after that date, shall be held to be a deserter from the army or navy; but this section shall be construed solely as a removal of any disability such soldier or sailor may have incurred under the preceding section, by the loss of citizenship and of the right to hold office in consequence of his desertion.

368. Avoidance of draft. [Sec. 1998, R. S. of U. S.] Every person who hereafter deserts the military or naval service of

the United States, or who, being duly enrolled, departs the jurisdiction of the district in which he is enrolled, or goes beyond the limits of the United States, with intent to avoid any draft into the military or naval service, lawfully ordered, shall be liable to all the penalties and forfeitures of section 1996 [paragraph 265].

NATURALIZATION OF ALIENS.

369. Manner of. [Sec. 2165, R. S. of U. S.] An alien may be admitted to become a citizen of the United States in the following manner, and not otherwise:

First. He shall declare on oath before a circuit or district court of the United States, or a district or supreme court of the territories, or a court of record of any of the states having common-law jurisdiction, and a seal and clerk two years at least prior to his admission that it is bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly by name the prince, potentate, state or sovereignty, of which the alien may be at the time a citizen or subject.

Second. He shall at the time of his application to be admitted, declare on oath, before some one of the courts above specified, that he will support the constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to every foreign prince, potentate, state or sovereignty; and particularly, by name, to the prince, potentate, state or sovereignty of which he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.

Third. It shall be made to appear to the satisfaction of the court admitting such alien that he has resided within the United States five years at least, and within the state or territory where such court is at the time held, one year at least; and that during that time, he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same; but the oath of the applicant shall, in no case, be allowed to prove his residence.

Fourth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or been of any of the

orders of nobility in the kingdom or state from which he came, he shall in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

Fifth. Any alien who was residing within the limits and under the jurisdiction of the United States, before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts above specified, that he has resided two years at least within the jurisdiction of the United States, and one year at least, immediately preceding his application, within the state or territory where such court is at the time held; and on his declaring on oath, that he will support the constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state or sovereignty and particularly by name to the prince, potentate, state or sovereignty whereof he was before a citizen or subject; and, also on its appearing to the satisfaction of the court, that, during such term of two years, he has behaved as a man of good moral character, attached to the constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien applying for admission to citizenship has borne any hereditary title or been of any of the orders of nobility in the kingdom or state from which he came, on his, moreover, making in the court an express renunciation of his title or order of nobility. All of the proceedings required in this condition to be performed in the court shall be recorded by the clerk thereof.

Sixth. Any alien, who was residing within the limits and under the jurisdiction of the United States between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States without having made any previous declaration of his intention to become such; but whenever any person, without a certificate of such declaration of intention makes application to be admitted a citizen, it must be proved to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of the United States before the eighteenth day of June, one thousand eight hundred and twelve,

and has continued to reside within the same; and the residence of the applicant within the limits under the jurisdiction of the United States for at least five years immediately preceding the time of such application must be proved by oath of citizens of the United States, which citizens shall be named in the record as witnesses; and such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place where the applicant has resided for at least five years, shall be stated and set forth, together with the names of such citizens in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

370. Declaration, where made. [Vol. 19, U. S. Statutes, page 2, act of February 1, 1876.] That the declaration of intention to become a citizen of the United States, required by section 2165 of the Revised Statutes of the United States may be made by an alien before the clerk of any of the courts named in said section 2165 [preceding paragraph]; and all such declarations heretofore made before any such clerk are hereby declared as legal and valid as if made before one of the courts named in said section.

371. Aliens honorably discharged from military service. [Sec. 2166, R. S. of U. S.] Any alien of the age of twenty-one years and upwards, who has enlisted, or may enlist in the armies of the United States, either the regular or volunteer forces, and has been or may be hereafter honorably discharged, shall be admitted to become a citizen of the United States upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and good moral character as now provided by law, be satisfied by competent proof of such person having been honorably discharged from the service of the United States.

372. Aliens honorably discharged from the navy, etc. [Extract from act of July 26, 1894, vol. 28 U. S. Statutes, p. 124.] Any alien of the age of twenty-one years and upward who has enlisted or may enlist in the United States navy or marine corps, and has served or may hereafter serve five consecutive

years in the United States navy or one enlistment in the United States marine corps, and has been or may hereafter be honorably discharged, shall be admitted to become a citizen of the United States upon his petition, without any previous declaration of his intention to become such; and the court admitting such alien shall, in addition to proof of good moral character, be satisfied by competent proof of such person's service in and honorable discharge from the United States navy or marine corps.

373. Minor residents. [Sec. 2167, R. S. of U. S.] Any alien, being under the age of twenty-one years, who has resided in the United States three years next preceding his arriving at that age, and who has continued to reside therein to the time he may make application to be admitted a citizen thereof, may after he arrives at the age of twenty-one years, and after he has resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of section 2165 [paragraph 268]; but such alien shall make the declaration required therein at the time of his admission and shall further declare on oath, and prove to the satisfaction of the court that for two years next preceding it has been his bona fide intention to become a citizen of the United States; and he shall in all other respects comply with the laws in regard to naturalization.

374. Widow and children of declarant. [Sec. 2168, R. S. of U. S.] When any alien who has complied with the first condition specified in section 2165 [paragraph 268] dies before he is actually naturalized, the widow and children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oath prescribed by law.

375. Persons of African nativity. [Sec. 2169, R. S. of U. S., as amended by act of February 18, 1875, vol. 18, U. S. Statutes, p. 318.] The provisions of this title shall apply to aliens, being free white persons, and to aliens of African nativity, and to persons of African descent.

376. Residence. [Sec. 2170, R. S. of U. S.] No alien shall be admitted to become a citizen who has not for the continued

term of five years next preceding his admission resided within the United States.

377. Alien enemies. [Sec. 2171, R. S. of U. S.] No alien who is a native citizen or subject or a denizen of any country, state or sovereignty, with which the United States are at war at the time of his application, shall be then admitted to become a citizen of the United States; but persons resident within the United States, or the territories thereof on the eighteenth day of June in the year one thousand eight hundred and twelve, who had before that day made a declaration according to law of their intention to become citizens of the United States, or who were on that day entitled to become citizens without making such declaration, may be admitted to become citizens thereof, notwithstanding they were alien enemies at the time, and in the manner prescribed by the laws heretofore passed on that subject; nor shall anything herein contained be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

378. Children of naturalized persons. [Sec. 2172, R. S. of U. S.] The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject by the government of the United States, may have become citizens of any one of the states, under the laws thereof, being under the age of twenty-one years, at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof, and the children of persons who now are, or have been citizens of the United States shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof. But no person hertofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the revolutionary war, shall be admitted to become a citizen without the consent of the legislature of the state in which such person was proscribed.

379. Police court of the D. C. [Sec. 2173, R. S. of U. S.] The police court of the District of Columbia shall have no power to naturalize foreigners.

380. Naturalization of seamen. [Sec. 2174, R. S. of U. S.] Every seaman, being a foreigner, who declares his intention of

becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant vessel of the United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with a certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner shall, after his declaration of intention to become a citizen of the United States, and after he shall have served such three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant vessel of the United States, anything to the contrary in any act of congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such, after the filing of his declaration of intention to become such citizen.

381. Chinese. It is provided by section 14, act of May 6, 1882, (22 U. S. Stats., 58) "That hereafter no state court or court of the United States shall admit Chinese to citizenship; and all laws in conflict with this act are hereby repealed."

PART XX.

POLITICAL DIVISIONS OF THE STATE.

CONGRESSIONAL DISTRICTS.

382. Division of state into. [Sec. 1, ch. 398, laws of 1901.] Until otherwise provided by law, the state is divided into eleven congressional districts, each of which shall be entitled to elect one representative in the congress of the United States. The counties of Racine, Kenosha, Walworth, Rock, Green and Lafayette shall constitute the first district. The counties of Jefferson, Dane, Columbia, Green Lake, Marquette and Adams shall constitute the second district. The counties of Grant, Crawford, Richland, Sauk, Juneau, Vernon and Iowa shall constitute the third district. The second, third, fourth, fifth, seventh, eighth and twenty-third, eleventh, twelfth, fourteenth, fifteenth, sixteenth and seventeenth wards of the city of Milwaukee, together with the following sub-divisions of Milwaukee county: city of Wauwatosa, city of South Milwaukee, village of Cudahy, town of Lake, town of Oak Creek, town of Franklin, town of Greenfield and town of Wauwatosa, shall constitute the fourth district. The first, sixth, ninth, tenth, thirteenth, eighteenth, nineteenth and twenty-second, twentieth and twenty-first wards of the city of Milwaukee, together with the following subdivisions of Milwaukee county: village of North Milwaukee, village of Whitefish Bay, village of East Milwaukee, town of Milwaukee, town of Granville and the county of Waukesha, shall constitute the fifth district. The counties of Sheboygan, Fond du Lac, Dodge, Washington and Ozaukee shall constitute the sixth district. The counties of Pepin, Buffalo, Trempealeau, Jackson, Eau Claire, Clark, Monroe and

La Crosse shall constitute the seventh district. The counties of Portage, Waupaca, Waushara, Winnebago, Calumet and Manitowoc shall constitute the eighth district. The counties of Brown, Kewaunee, Door, Outagamie, Oconto and Marinette, shall constitute the ninth district. The counties of Iron, Vilas, Oneida, Forest, Florence, Langlade, Lincoln, Shawano, Marathon, Taylor, Price, Ashland and Wood, shall constitute the tenth district. The counties of Douglas, Sawyer, Pierce, Bayfield, Barron, Dunn, Burnett, Polk, Chippewa, Washburn and St. Croix, shall constitute the eleventh district.¹

SENATE DISTRICTS.

383. How constituted. [Sec. 1, ch. 309, laws of 1901.] Until there shall be a new apportionment the senatorial districts of this state shall be constituted as follows:

The counties of Door, Kewaunee and Marinette shall constitute the first district. The counties of Brown and Oconto shall constitute the second district. The counties of Kenosha and Racine shall constitute the third district. The first, thirteenth, eighteenth and twenty-first wards of the city of Milwaukee, the towns of Granville and Milwaukee, and the villages of North Milwaukee, East Milwaukee and Whitefish Bay shall constitute the fourth district. The second, third, fourth, sixth, seventh, fifteenth and sixteenth wards of the city of Milwaukee shall constitute the fifth district. The ninth, tenth, nineteenth, twentieth and twenty-second wards of the city of Milwaukee shall constitute the sixth district. The fourteenth and seventeenth wards of the city of Milwaukee, the towns of Oak Creek, Lake, Franklin, Greenfield and Wauwatosa, the village of Cudahy, and the cities of South Milwaukee and Wauwatosa shall constitute the seventh district. The fifth, eighth, eleventh, twelfth and twenty-third wards of the city of Milwaukee shall constitute the eighth district. The counties of Adams, Marquette, Wood and Waushara shall constitute the ninth district. The counties of Pierce and St. Croix shall constitute the tenth district. The counties of Burnett, Douglas and Polk shall constitute the eleventh district. The counties of Ashland, Bayfield, Sawyer, Washburn, Price and Taylor shall constitute the twelfth district. The county of Dodge shall constitute the

¹Sec. 11, ch. 469, laws of 1901, attaches the new county of Gates to the eleventh congressional district. Ch. 463, laws of 1905, changes the name of this county to Rusk.

thirteenth district. The counties of Outagamie and Shawano shall constitute the fourteenth district. The counties of Calumet and Manitowoc shall constitute the fifteenth district. The counties of Grant and Crawford shall constitute the sixteenth district. The counties of Green, Lafayette and Iowa shall constitute the seventeenth district. The counties of Fond du Lac and Green Lake shall constitute the eighteenth district. The county of Winnebago shall constitute the nineteenth district. The counties of Ozaukee and Sheboygan shall constitute the twentieth district. The counties of Portage and Waupaca shall constitute the twenty-first district. The county of Rock shall constitute the twenty-second district. The counties of Walworth and Jefferson shall constitute the twenty-third district. The counties of Eau Claire and Chippewa shall constitute the twenty-fourth district.¹ The counties of Clark and Marathon shall constitute the twenty-fifth district. The county of Dane shall constitute the twenty-sixth district. The counties of Columbia and Sauk shall constitute the twenty-seventh district. The counties of Richland and Vernon shall constitute the twenty-eighth district. The counties of Dunn, Barron, Pepin, Buffalo, shall constitute the twenty-ninth district. The counties of Florence, Forest, Langlade, Lincoln, Oneida, Vilas and Iron shall constitute the thirtieth district. The counties of Jackson, Juneau and Monroe shall constitute the thirty-first district. The counties of La Crosse and Trempealeau shall constitute the thirty-second district. The counties of Washington and Waukesha shall constitute the thirty-third district.

ASSEMBLY DISTRICTS.

384. How constituted. [Sec. 1, ch. 164, laws of 1901.] Until there shall be a new apportionment, the members of the assembly shall be apportioned among the several districts of the state as hereinafter mentioned, and each district shall be entitled to elect one member of the assembly.

The counties of Ashland, Barron, Calumet, Clark, Crawford, Door, Dunn, Green, Green Lake, Iowa, Jackson, Juneau, Keweenaw, Kewaunee, La Fayette, Lincoln, Monroe, Oconto, Ozaukee, Pierce, Portage, Richland, Shawano, St. Croix, Trem-

¹ Sec. 11, ch. 469, laws of 1901, attaches the new county of Gates to the twenty-fourth senatorial district. Ch. 463, laws of 1905, changes the name of this county to Rusk.

pealeau, Vernon, Walworth, Wood, Waushara, Washington shall each constitute an assembly district.

The counties of Adams and Marquette shall constitute an assembly district. The counties of Bayfield, Sawyer and Washburn shall constitute an assembly district. The counties of Buffalo and Pepin shall constitute an assembly district. The counties of Burnett and Polk shall constitute an assembly district. The counties of Forest, Florence and Langlade shall constitute an assembly district. The counties of Iron, Oneida and Vilas shall constitute an assembly district. The counties of Price and Taylor shall constitute an assembly district.

Brown County.—The towns of Ashwaubenon, Howard, Pittsfield, Suamico, the city of Green Bay, shall constitute the first assembly district of Brown county. The towns of Allouez, Bellevue, De Pere, Eaton, Green Bay, Humboldt, Preble, Holland, Glenmore, Morrison, Lawrence, New Denmark, Rockland, Wrightstown, Scott, the village of Wrightstown, the city of De Pere and that part of Oneida reservation within the county of Brown shall constitute the second assembly district of Brown county.

Chippewa County.—The towns of Edson, Lafayette, Sigel, Tilden, Wheaton, the third ward of the city of Chippewa Falls, the fourth ward of the city of Chippewa Falls, the fifth ward of the city of Chippewa Falls, the sixth ward of the city of Chippewa Falls, the eighth ward of the city of Chippewa Falls, the ninth ward of the city of Chippewa Falls, the tenth ward of the city of Chippewa Falls, the first ward of the city of Stanley, the second ward of the city of Stanley, the third ward of the city of Stanley, the villages of Boyd, Cadott, shall constitute the first assembly district of Chippewa county. The towns of Anson, Auburn, Arthur, Bloomer, Big Bend, Cleveland, Colburn, Dewey, Eagle Point, Flambeau, Lawrence, Sampson, Strickland, the village of Bloomer, the first ward of the city of Chippewa Falls, the second ward of the city of Chippewa Falls, the seventh ward of the city of Chippewa Falls, shall constitute the second assembly district of Chippewa county.¹

Columbia County.—The towns of Arlington, Caledonia, Dekorra, Fort Winnebago, Lewiston, Lodi, New Port, Pacific, West Point, the villages of Kilbourn City, Lodi, Poynette, the city of Portage shall constitute the first assembly district of Co-

¹ Sec. 11, ch. 460, laws of 1901, attaches the new county of Gates to the second assembly district of Chippewa county. Ch. 463, laws of 1905, changes the name of this county to Rusk.

lumbia county. The towns of Columbus, Courtland, Fountain Prairie, Hampden, Leeds, Lowville, Marcellon, Otsego, Randolph, Scott, Springdale, Wyocena, the villages of Cambria, Pardeeville, Rio, west ward of the village of Randolph, the city of Columbus, shall constitute the second assembly district of Columbia county.

Dane County.—The towns of Blooming Grove, Dunn, Madison, Pleasant Springs, the city of Madison shall constitute the first assembly district of Dane county. The towns of Albion, Bristol, Burke, Cottage Grove, Christiana, Deerfield, Dunkirk, Medina, Sun Prairie, Windsor, Westport, York, the villages of Deerfield, Sun Prairie, Waunakee, the city of Stoughton shall constitute the second assembly district of Dane county. The towns of Black Earth, Berry, Blue Mounds, Cross Plains, Dane, Fitchburg, Mazomanie, Middleton, Montrose, Oregon, Primrose, Perry, Roxbury, Rutland, Springfield, Springdale, Vienna, Vermont, Verona, the villages of Dane, Oregon, Mazomanie, Belleville, Mount Horeb, shall constitute the third assembly district of Dane county.

Dodge County.—The towns of Ashippun, Clyman, Emmett, Herman, Hubbard, Hustisford, Lebanon, Leroy, Lomira, Rubicon, Shields, Theresa, Williamstown, the fifth ward of the city of Watertown, the sixth ward of the city of Watertown, the villages of Lomira, Theresa, the cities of Horicon, Mayville shall constitute the first assembly district of Dodge county. The towns of Beaver Dam, Burnett, Calamus, Chester, Elba, Fox Lake, Lowell, Oak Grove, Portland, Trenton, Westford, the villages of Fox Lake, Lowell, Reeseville, the east ward of the village of Randolph, the south ward of the city of Waupun, the cities of Juneau, Beaver Dam, shall constitute the second assembly district of Dodge county.

Douglas County.—The second ward of the city of Superior, the third ward of the city of Superior, the fourth ward of the city of Superior, the fifth ward of the city of Superior, the sixth ward of the city of Superior, shall constitute the first assembly district of Douglas county. The towns of Brule, Gordon, Nebagamon, Superior, the first ward of the city of Superior, the seventh ward of the city of Superior, the eighth ward of the city of Superior, the ninth ward of the city of Superior, the tenth ward of the city of Superior shall constitute the second assembly district of Douglas county.

Eau Claire County.—The town of Seymour, the first ward of the city of Eau Claire, the second ward of the city of Eau

Claire, the third ward of the city of Eau Claire, the fifth ward of the city of Eau Claire, the sixth ward of the city of Eau Claire, the eighth ward of the city of Eau Claire, the ninth ward of the city of Eau Claire, the tenth ward of the city of Eau Claire, the city of Altoona shall constitute the first assembly district of Eau Claire county. The towns of Bridge Creek, Brunswick, Clear Creek, Drammen, Fairchild, Lincoln, Ludington, Otter Creek, Pleasant Valley, Union, Washington, the village of Fairchild, the fourth ward of the city of Eau Claire, the seventh ward of the city of Eau Claire, the city of Augusta shall constitute the second assembly district of Eau Claire county.

Fond du Lac County.—The towns of Calumet, Empire, Fond du Lac, Forest, Friendship, Marshfield, Taycheedah, the city of Fond du Lac shall constitute the first assembly district of Fond du Lac county. The towns of Alto, Ashford, Auburn, Byron, Eden, Eldorado, Lamartine, Metomen, Osceola, Oakfield, Ripon, Rosendale, Springvale, Waupun, the village of Brandon, the north ward of the city of Waupun, the city of Ripon shall constitute the second assembly district of Fond du Lac county.

Grant County.—The towns of Beetown, Cassville, Clifton, Ellenborough, Glen Haven, Hazel Green, Harrison, Jamestown, Lima, Paris, Platteville, Potosi, Smelzer, Waterloo, the villages of Cassville, Cuba City, Hazel Green, Potosi, the city of Platteville shall constitute the first assembly district of Grant county. The towns of Boscobel, Castle Rock, Fennimore, Hickory Grove, Lancaster, Liberty, Little Grant, Marion, Milleville, Mt. Hope, Mt. Ida, Muscoda, Patch Grove, Bloomington, Watterstown, Wingville, Woodman, Wyalusing, the villages of Bloomington, Fennimore, Montford, Muscoda, the city of Boscobel, the city of Lancaster, shall constitute the second assembly district of Grant county.

Jefferson County.—The towns of Concord, Farmington, Hebron, Ixonia, Milford, Palmyra, Sullivan, Watertown, the village of Palmyra, the first ward of the city of Watertown, the second ward of the city of Watertown, the third ward of the city of Watertown, the fourth ward of the city of Watertown, the seventh ward of the city of Watertown, shall constitute the first assembly district of Jefferson county. The towns of Aztalan, Cold Spring, Jefferson, Koshkonong, Lake Mills, Sumner, Waterloo, Oakland, the villages of Lake Mills, Waterloo, the

cities of Fort Atkinson, Jefferson shall constitute the second assembly district of Jefferson county.

La Crosse County.—The town of Campbell, the first ward of the city of La Crosse, the second ward of the city of La Crosse, the fourth ward of the city of La Crosse, the fifth ward of the city of La Crosse, the sixth ward of the city of La Crosse, the seventh ward of the city of La Crosse, the ninth ward of the city of La Crosse, the tenth ward of the city of La Crosse, the eleventh ward of the city of La Crosse, the twelfth ward of the city of La Crosse, the thirteenth ward of the city of La Crosse, the fourteenth ward of the city of La Crosse, the fifteenth ward of the city of La Crosse, the sixteenth ward of the city of La Crosse, the nineteenth ward of the city of La Crosse, the twentieth ward of the city of La Crosse shall constitute the first assembly district of La Crosse county. The towns of Bangor, Barre, Burns, Farmington, Greenfield, Hamilton, Holland, Onalaska, Shelby, Washington, the villages of Bangor, West Salem, the third ward of the city of La Crosse, the eighth ward of the city of La Crosse, the seventeenth ward of the city of La Crosse, the eighteenth ward of the city of La Crosse, the city of Onalaska shall constitute the second assembly district of La Crosse county.

Manitowoc County.—The towns of Centerville, Liberty, Manitowoc, Manitowoc Rapids, Meeme, Newton, the city of Manitowoc shall constitute the first assembly district of Manitowoc county. The towns of Cato, Cooperstown, Eaton, Franklin, Gibson, Kossuth, Maple Grove, Mishicott, Rockland, Schleswig, Two Creeks, Two Rivers, the villages of Kiel, Reedsville, the city of Two Rivers, shall constitute the second assembly district of Manitowoc county.

Marathon County.—The towns of Bergen, Berlin, Brighton, Cassel, Cleveland, Day, Eau Pleine, Emmett, Frankfort, Halsey, Hamburg, Holton, Hull, Johnson, Maine, McMillan, Marathon, Mosinee, Rib Falls, Reitbrock, Spencer, Stettin, Wein, the village of Marathon City, the village of McMillan, the village of Mosinee, east ward of Colby, village of Edgar shall constitute the first assembly district of Marathon county. The towns of Easton, Eldron, Harriscn, Hewitt, Knowlton, Krone-wetter, Norrie, Pike Lake, Plover, Texas, Wausau, Weston, the city of Wausau shall constitute the second assembly district of Marathon county.

Marinette County.—The city of Marinette shall be the first assembly district of Marinette county. The towns of Amberg,

Crivitz, Coleman, Dunbar, Grover, Porterfield, Peshtigo, Wau-saukee, shall constitute the second assembly district of Marinette county.

Milwaukee County.—The first ward of the city of Milwaukee, the eighteenth ward of the city of Milwaukee shall constitute the first assembly district of Milwaukee county. The second ward of the city of Milwaukee, the sixth ward of the city of Milwaukee shall constitute the second assembly district of Milwaukee county. The seventeenth ward of the city of Milwaukee, the towns of Oak Creek, Lake, the village of Cudahy, the city of South Milwaukee shall constitute the third assembly district of Milwaukee county. The fifteenth ward of the city of Milwaukee, the sixteenth ward of the city of Milwaukee shall constitute the fourth assembly district of Milwaukee county. The fifth ward of the city of Milwaukee, the twelfth ward of the city of Milwaukee shall constitute the fifth assembly district of Milwaukee county. The third ward of the city of Milwaukee, the fourth ward of the city of Milwaukee, the seventh ward of the city of Milwaukee shall constitute the sixth assembly district of Milwaukee county. The towns of Franklin, Greenfield, Wauwatosa, the city of Wauwatosa shall constitute the seventh assembly district of Milwaukee county. The eighth and twenty-third wards of the city of Milwaukee, shall constitute the eighth assembly district of Milwaukee. The ninth ward of the city of Milwaukee shall constitute the ninth assembly district of Milwaukee county. The tenth ward of the city of Milwaukee shall constitute the tenth assembly district of Milwaukee county. The eleventh ward of the city of Milwaukee shall constitute the eleventh assembly district of Milwaukee county. The nineteenth and twenty-second wards of the city of Milwaukee shall constitute the twelfth assembly district of Milwaukee county. The thirteenth ward of the city of Milwaukee shall constitute the thirteenth assembly district of Milwaukee county. The fourteenth ward of the city of Milwaukee shall constitute the fourteenth assembly district of Milwaukee county. The twenty-first ward of the city of Milwaukee, the towns of Granville, Milwaukee, the villages of East Milwaukee, North Milwaukee, Whitefish Bay shall constitute the fifteenth assembly district of Milwaukee county. The twentieth ward of the city of Milwaukee, shall constitute the sixteenth assembly district of Milwaukee county.

Outagamie County.—The towns of Bovina, Center, Dale, Ellington, Grand Chute, Greenville, the city of Appleton shall

constitute the first assembly district of Outagamie county. The towns of Buchanan, Black Creek, Cicero, Deer Creek, Freedom, Horton, Kaukauna, Liberty, Maple Creek, Maine, Osborne, Seymour, that part of Oneida reservation that lies within Outagamie county, the villages of Little Chute, Hortonville, the cities of Kaukauna, Seymour, the third ward of the city of New London, shall constitute the second assembly district of Outagamie county.

Racine County.—The first ward of the city of Racine, the second ward of the city of Racine, the third ward of the city of Racine, the fourth ward of the city of Racine, the fifth ward of the city of Racine, the sixth ward of the city of Racine shall constitute the first assembly district of Racine county. The towns of Burlington, Caledonia, Dover, Mt. Pleasant, Norway, Raymond, Rochester, villages of Union Grove, Waterford, Yorkville, the seventh ward of the city of Racine, the city of Burlington shall constitute the second assembly district of Racine county.

Rock County.—The towns of Center, Fulton, Janesville, Lima, Milton, Magnolia, Porter, Rock, Spring Valley, Union, the cities of Edgerton, Evansville shall constitute the first assembly district of Rock county. The towns of Bradford, Harmony, Johnstown, LaPrairie, the city of Janesville shall constitute the second assembly district of Rock county. The towns of Avon, Beloit, Clinton, Newark, Plymouth, Turtle, the village of Clinton, the city of Beloit shall constitute the third assembly district of Rock county.

Sauk County.—The towns of Baraboo, Delona, Delton, Excelsior, Fairfield, Freedom, Greenfield, Merrimac, Prairie du Sac, Sumpter, the village of Ableman, Merrimac, North Freedom, Prairie du Sac, Sauk City, the city of Baraboo shall constitute the first assembly district of Sauk county. The towns of Bear Creek, Franklin, Honey Creek, Ironton, La Valle, Reedsburg, Spring Green, Troy, Washington, Westfield, Winfield, Woodland, the villages of La Valle, Spring Green, the city of Reedsburg shall constitute the second assembly district of Sauk county.

Sheboygan County.—The town of Sheboygan, the city of Sheboygan shall be the first assembly district of Sheboygan county. The towns of Greenbush, Herman, Holland, Lima, Lyndon, Mitchell, Mosel, Plymouth, Rhine, Russell, Scott, Sheboygan Falls, Sherman, Wilson, the villages of Cedar Grove,

Elkhart Lake, Sheboygan Falls, the city of Plymouth shall constitute the second assembly district of Sheboygan county.

Waupaca County.—The towns of Caledonia, Dayton, Farmington, Freemont, Lind, Little Wolf, Royalton, St. Lawrence, Scandinavia, Waupaca, Weyauwega, the villages of Weyauwega, Fremont, Manawa, Scandinavia, the city of Waupaca shall constitute the first assembly district of Waupaca county. The towns of Bear Creek, Dupont, Harrison, Helvetia, Iola, Lebanon, Larrabee, Matteson, Mukwa, Union, Wyoming, the villages of Embarrass, Iola, Marion, the city of Clintonville, the first ward of the city of New London, the second ward of the city of New London, the fourth ward of the city of New London, the fifth ward of the city of New London shall constitute the second assembly district of Waupaca county.

Waukesha County.—The towns of Eagle, Genesee, Mukwonago, Muskego, New Berlin, Ottawa, Vernon, Waukesha, the village of Eagle, the city of Waukesha shall constitute the first assembly district of Waukesha county. The towns of Brookfield, Delafield, Lisbon, Menominee, Merton, Oconomowoc, Pewaukee, Summit, the villages of Hartland, Menominee Falls, Pewaukee, the city of Oconomowoc shall constitute the second assembly district of Waukesha county.

Winnebago County.—Town of Oshkosh, city of Oshkosh, first ward, city of Oshkosh, second ward, city of Oshkosh, fourth ward, city of Oshkosh, fifth ward, city of Oshkosh, seventh ward, city of Oshkosh, eighth ward, city of Oshkosh, tenth ward, city of Oshkosh, eleventh ward, city of Oshkosh, twelfth ward shall constitute the first assembly district of Winnebago county. Towns of Clayton, Menasha, Neenah, Vinland, Winchester, Winneconne, Wolf River, Winneconne village, Menasha city, Neenah city shall constitute the second assembly district of Winnebago county. Towns of Algoma, Black Wolf, Nekimi, Nepeuskun, Omro, Poygan, Rushford, Utica, city of Oshkosh, third ward, city of Oshkosh, sixth ward, city of Oshkosh, ninth ward, city of Oshkosh, thirteenth ward, Omro village shall constitute the third assembly district of Winnebago county.

Omissions. [Sec. 2, ch. 164, laws of 1901.] In case any town, city or ward has not been attached to or included in any assembly district by its proper name or designation, or has been omitted from any cause by the provisions of this act, such town, city, ward or village shall be a part of the assembly district in

which the adjoining town, village or ward having the least population in the same assembly district is situated.

Creation of new counties; effect on apportionment. Sec. 4, Art. IV, Const. (providing that "assembly districts shall be bounded by county, precinct, town or ward lines"), is not violated by any act creating a new county out of a portion of the territory of one of the assembly districts in an old county, but providing that it shall form a part of the original district until otherwise apportioned according to law. For the purpose of electing an assemblyman the new county, in such a case, may be treated as non-existing: *State ex rel. Hicks v. Stevens*, 112 Wis. 695.

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